SUPREME COURT OF THE UNITED STATES.

No. 156.

DADE HOOE ET AL., APPELLANTS,

vs.

JESSE B. WILSON.

ADDITION TO RECORD.

1 Supreme Court of the United States.

DADE HOOE & AL. *v.* JESSE B. WILSON. } No. 156, Dec. T., 1869.

It is agreed that there shall be added to the record, to have the same effect as if returned under a writ of diminution, the following proceedings in the cause of Zephaniah Jones v. Ingle & al., No. 502, equity, viz: The final decree of sale, the trustees' report of sale, the exceptions filed to the ratification of the sale and the order of the court thereon, the order of ratification of the sale, the deed of the trustee to the purchaser.

2 R. J. BRENT, *for Appellants.*
WALTER S. COX, *for Appellee.*

3 (Indorsed:) Dade Hooe & al. v. Jesse B. Wilson. Agreement for addition to record.

4 Supreme Court of the United States.

DADE HOOE & AL. *vs.* JESSE B. WILSON. } No. 156, Dec. T., 1869.

It is agreed that there shall be added to the record, to have the same effect as if returned under a writ of diminution, the following proceedings in the cause of Zephaniah Jones vs. Ingle & al., No. 502, equity, viz: The final decree of sale, the trustees' report of sale, the exceptions filed to the ratification of the sale and the order of the court thereon, the order of ratification of the sale, the deed of the trustee to the purchaser.

R. J. BRENT, *for Appellants.*
WALTER S. COX, *for Appellee.*

MAR. 3, 1870.

A true copy.

5 DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, certify that the following 11¼ pages of writing are truly copied from the originals on file in the clerk's office of said court, being the papers stated in the foregoing agreement.

Witness my hand and the seal of said court this 11th day of March, 1870.

[SEAL.] R. J. MEIGS, *Clerk.*

6 *Final decree for sale.—Filed July* 3, 1866.

In the supreme court of the District of Columbia.

JONES *vs.* STRINGFELLOW ET AL. } In chancery, No. 502.

This case standing ready for hearing, and the same having been argued by the counsel for complainant, and the counsel for defendants having declined to argue the same, the proceedings were read and considered. It is thereupon, this third day of July, ordered, adjudged, and decreed by the authority of this court, that Ann R. Dermott was at the time of her death indebted to the complainant, Zephaniah Jones, in the sum of twenty thousand one hundred and thirty-six dollars and twenty-three cents, with interest from the fifth day of April, eighteen hundred and fifty-two, and that there is further due said complainant the sum of four hundred and forty-five dollars and sixty-one cents, being for costs by him expended in the prosecution of his said debt in the lifetime of said Ann R. Dermott, and since her death, together with his costs in this suit, to be taxed by the clerk.

7 And it is further ordered, adjudged, and decreed that the real estate, with the improvements and appurtenances in the bill mentioned as belonging to said Ann R. Dermott, at the time of her death, be sold; that A. Thomas Bradley and William Y. Fendall be, and they are hereby, appointed trustees to make such sale; and that the course and manner of their proceedings shall be as follows:

They shall first file with the clerk of this court their bond to the United States of America in the penalty of one hundred and fifty thousand dollars, and with a surety or sureties to be approved by this court, and conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any future order or decree in the premises; they shall then proceed to make sale of the said real estate, with the improvements and appurtenances, having first given at least three weeks previous notice by advertisement

8 in two or more newspapers published in the city of Washington, in this District, of the time, place, and terms of sale, which terms shall be as follows: One-third the purchase-money to be paid in cash, and the residue in two equal instalments, payable in six and twelve months from the day of sale, for which deferred payments, with interest from the day of sale, the purchaser shall give his notes endorsed to the satisfaction of the said trustees.

And the said trustees shall, as soon as may be convenient after such sale, return to this court a full and particular account thereof, with an affidavit annexed of the fairness of the same.

And on the ratification of such sale by this court, and the payment of the whole purchase-money, the said trustees, by a good and sufficient

deed, to be executed and acknowledged agreeably to law, shall convey to the purchaser and his heirs the said property free, clear, and discharged of and from all claim of the parties to this cause, and of
9 any person or persons claiming by, from, or under them. And the said trustees shall hold the money arising from such sale, and the notes to be given as aforesaid, subject to the direction of this court, and shall be and are hereby authorized to take the whole amount of said purchase-money in cash if the purchaser shall elect so to pay the same, instead of giving his notes for the deferred payments as aforesaid.

By order of the court.

10 *Trustees' report of sale.—Filed Jan.* 12, 1867.

Supreme court of the District of Columbia.

ZEPHANIAH JONES
v.
HORACE STRINGFELLOW ET AL. } No. 502, in chancery.

To the honorable the justices of the supreme court of the District of Columbia:

The report of A. Thomas Bradley and William Y. Fendall, trustees appointed by decree in this cause to make sale of certain real estate therein mentioned, respectfully shews that after giving bond, with security, for the faithful discharge of their trust, as required by said decree, and giving more than three weeks previous notice of the time, place, and terms of sale, by advertisement in the National Intelligencer, a newspaper printed and published in the city of Washington, in said district, a certified copy of which advertisement is herewith filed, marked Exhibit B. & F., No. 1, (and also by advertisement in the Evening Star, a newspaper printed and published in said city, a copy of
11 which advertisement is herewith filed, marked Exhibit B. & F., No. 2,) they did, in pursuance of said notice, attend the premises in said city, on Wednesday, the 2d of January, in the year 1867, at three and a half o'clock p. m., and then and there proceed to sell at public auction said real estate, with the improvements and appurtenances, to wit, parts of lots one and twelve, in square four hundred and thirty-two in said city, together with the improvements and appurtenances, as described in the bill in this cause, and then and there sold the same to Jesse B. Wilson, he being then and there the highest bidder therefor, at and for the sum of eighty thousand and nine hundred dollars, ($80,900$\frac{00}{100}$;) that the said Wilson has since complied with the terms of sale by paying to your trustees twenty-six thousand and nine hundred and sixty-six dollars and sixty-seven cents, ($26,966$\frac{67}{100}$,) in cash, and by giving to your trustees his note for twenty-six thousand nine hun-
12 dred and sixty-six dollars and sixty-six cents, ($26,966$\frac{66}{100}$,) dated on said 2d day of January, in the year 1867, payable in six months after its date, to John C. McKelden, or order, with interest, and endorsed by said McKelden, and by Zephaniah Jones, and by giving your trustees his other note for twenty-six thousand nine hundred and sixty-six dollars and sixty-seven cents, ($26,966$\frac{67}{100}$,) dated on said 2d day of January, payable to Charles Edmonston, or order, in twelve months after date thereof, with interest, and endorsed by said Edmonston, and by Zephaniah Jones. And your trustees farther report that they have deposited said cash payment, and said notes, in the Bank of Washing-

ton, of said city, and herewith file a certificate thereof marked Exhibit B. & F., No. 3.

All of which is respectfully submitted.

A. THOS. BRADLEY,
W. Y. FENDALL, *Trustees.*

13 On this eighth day of January, in the year 1867, before me, Return J. Meigs, clerk of the supreme court of the District of Columbia, personally appeared the within-named A. Thomas Bradley and William Y. Fendall, trustees, and made oath that the matters and things stated in the foregoing report are true to the best of their knowledge and belief, and that the sale therein reported was fairly made.

R. J. MEIGS, *Clerk.*

Order nisi confirming sale.—Filed Jan'y 12, 1867.

Supreme court of the District of Columbia.

ZEPHANIAH JONES
vs.
HORACE STRINGFLLOW ET AL. } No. 502, equity.

A. Thomas Bradley and William Y. Fendall, trustees, having reported that they had on the 2d day of January, 1867, sold the real estate in the bill mentioned, with the improvements and appurtenances, at
14 and for $80,900, to Jesse B. Wilson, who had complied with the terms of sale, it is, this twelfth day of January, 1867, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the first Tuesday of February next, provided a copy of this order be published in the National Intelligencer three times a week for three weeks before said first Tuesday.

By order of the court.

Exceptions to trustees' report of sale.—Filed Feb'y 4, 1867.

Supreme court of the District of Columbia.

Z. JONES
vs.
STRINGFELLOW ET AL. } 502, in equity.

The defendants, who have appeared and answered in the above-entitled case, except to the sale reported by the trustees for the following reasons, viz:

15 1. Because there never was an order by the said court sitting in special term, allowing said sale to be made after the execution of the supersedeas appeal bond.

2. Because the purchaser, Jesse B. Wilson, was, at the time of his said purchase, the receiver appointed in said cause, and as such incapable of buying the property to which he then held a fiduciary relation.

3. Because an appeal was pending in the Supreme Court of the United States in said cause at the time of said sale, and this court, in the exercise of its discretion, ought not to ratify said sale until said appeal is finally disposed of.

R. J. BRENT,
For Defendants.

16 *Order overruling exceptions and final ratification.—Filed Feb'y 6, 1867.*

Supreme court of the District of Columbia.

ZEPHANIAH JONES
v.
HORACE STRINGFELLOW ET AL. } No. 502, equity.

The order of confirmation nisi passed in above-entitled cause on the 12th day of January, 1867, having been published as therein directed, and no cause having been shown against the confirmation of the sale made by A. Thomas Bradley and William Y. Fendall, trustees, and reported to the court by their report filed on the 12th day of January, 1867, except as set forth in the exceptions to said sale filed on the 4th day of February, 1867, it is thereupon ordered in special term this 6th day of February, 1867, after consideration of the above exceptions, that the same be, and they are hereby, overruled, and further, that
17 the sale made and reported as aforesaid be, and the same is hereby, finally and absolutely ratified and confirmed.

A. B. OLIN, *Justice.*

18 *A. Thos. Bradley and Wm. Y. Fendall to Jesse B. Wilson, deed.—Recorded April 17, 1867.*

This indenture, made this sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, between A. Thomas Bradley and William Y. Fendall, trustees, of the first part, and Jesse B. Wilson, of the second part, all of the county of Washington, in the District of Columbia, witnesseth:

Whereas, by virtue of a decree of the supreme court of the District of Columbia, made in the cause of Zepheniah Jones & al. vs. Stringfellow & al., No. 502, equity, and dated July 3, 1866, the said Bradley & Fendall, trustees, on the second day of January last, offered the hereinafter described premises for sale at public auction, and the said Jesse B. Wilson was the highest bidder for, and became the purchaser of, the same, at and for the sum of eighty thousand nine hundred dollars, and said sale was subsequently finally ratified by an order of said court, passed in said cause on the sixth day of February last, and said Jesse B. Wilson has fully paid and satisfied the said purchase-money, and is therefore entitled to a conveyance of said premises:

Now, this indenture witnesseth that the said A. Thomas Bradley and William Y. Fendall, trustees, for and in consideration of the premises, and of the sum of one dollar, to each of them in hand paid by the said Jesse B. Wilson before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and
19 conveyed, and do, by these presents, bargain, sell, and convey unto the said Jesse B. Wilson, his heirs and assigns, all that lot of ground in the city of Washington, in the county aforesaid, being composed of parts of lots numbers one (1) and (12) twelve [(12)] in square number four hundred andthirty-two, (432,) and bounded as follows, viz: Beginning at the southeast corner of said square and running thence west forty-seven (47) feet two (2) inches; thence north ninety (90) feet; thence west fifty-two (52) feet ten (10) inches; thence north twenty-five (25) feet four and a half inches (4½) inches; thence east one hundred (100) feet to Seventh (7th) street; and thence, with said street, to the be-

ginning, together with all and singular the improvements erected on said premises known as the Avenue House, and the alleys, ways, right, privileges, and appurtenances to the said premises belonging or in any wise appertaining, and all the right, title, and estate therein of the parties to said cause.

To have and to hold the same unto and for the only use and behoof of the said Jesse B. Wilson, his heirs and assigns, forever.

In testimony whereof the said A. Thomas Bradley and William Y. Fendall have hereunto set their hands and seals on the day and year first hereinbefore written.

A. THOS. BRADLEY, [SEAL.]
W. Y. FENDALL, *Trustees.* [SEAL.]

Signed, sealed, and del'd in our presence:
CHARLES WALTER.

DISTRICT OF COLUMBIA, *County of Washington, sct:*

20 I, Charles Walter, a notary public in and for the county aforesaid, do hereby certify that A. Thomas Bradley and William Y. Fendall, parties to a certain deed bearing date on the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and hereto annexed, personally appeared before me, at the county aforesaid, the said parties being personally well known to me as the persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand and official seal this 16th day of April, A. D. 1867.

[SEAL AFF'D.] CHARLES WALTER,
Notary Public.

21 (Indorsed :) This is to certify that the within is a true and verified copy of a deed as recorded in liber E. C. E., No. 3, fol. 390 et seq., one of the land records of this office.

[SEAL.] S. WOLF, *Recorder,*
GRATZ S. MAYER, *Dep.*

(Indorsement on cover:) No. 156. Dade Hooe et al., appellants, vs. Jesse B. Wilson. Addition to record & agreement of counsel. Dist. of Columbia sup. court.

Filed 11th March, 1870.

SUPREME COURT OF THE UNITED STATES.

December Term, 1869.

DADE HOOE ET AL, *Appellants*,
vs.
JESSE B. WILSON, *Respondent.*
} No. 156.

BRIEF OF APPELLANTS.

Statement of Case.

During the pendency of a suit in the nature of a creditor's bill brought by one Zephaniah Jones in the Supreme Court of the District of Columbia against one Stringfellow and others, including the above named appellants, the respondent in this case, (Jesse B. Wilson,) by an order of that court duly made on the 14th day of June, 1866, was appointed *Receiver* of all the real estate of Ann R. Dermott, deceased, which included the so called Avenue House, at the N. W. corner of Seventh street and Market Space, in the City of Washington. This order of appointment expressly authorized and charged Wilson with the management, care and rental of such real estate for the benefit of the parties in interest, and by virtue of said order the respondent Wilson, took full possession, &c., of said Avenue House, and continued such possession from June, 1866, *a period of more than* 6 *months*, until the same was sold under the decree of said court in said suit of Jones, agt. Stringfellow et al., on the 2*nd day of* January, 1867, at which sale he became the absolute purchaser, while still Receiver and manager of the property.

From this decree of sale which sale, was not ratified for some time afterwards, the defendants therein duly appealed to the Supreme Court of the United States, but there being no supersedeas appeal bond the aforesaid sale was made, and the decree has recently been affirmed.

On the 8th day of April, 1867, the appellants filed the present bill in the Supreme Court of the District of Columbia, setting forth the foregoing undisputed facts, together with the further facts (assumed to be sufficiently proved on pages 6 to 9 inclusive of the printed record,) that they were interested in said premises as heirs-at-law of Ann R. Dermott, and averring that such purchase by Wilson while *Receiver* of the property was voidable at their election, and that they did elect to avoid the same and to have the property resold. The bill prayed for an injunction and that the property might be reconveyed to the complainants, or resold at Wilson's risk upon such terms as might be right and proper, and for general relief.

The answer of the Defendant, (p. 3,) admits as follows :

1st. That he purchased under the decree referred to in the bill, the estate therein described.

2d. That he is in possession and receiving the rents and profits for his own use.

3d. That before the sale and prior to July, 1866, he was, by an order passed in said cause appointed Receiver of the real estate of Miss Dermott *including* the real estate aforesaid, and he acted as such and received the rents, and continued Receiver until the sale.

4th. That by reason of his said appointment he acquired *a knowledge* of said *property* and some *idea of its value*, but denies that he knew more than was open to every one else, or any such knowledge as gave him an advantage over any other bidder.

And he denies—

1st. That he was incapacitated from becoming a purchaser, and avers that his Fiduciary relation did not extend to the corpus of the property but only to the *rents and income.*

2d. Denies that he paid any part of the purchase money out of trust fund.

3d. Denies the heirship of Plaintiffs, &c.

The court below at General Term, denied all the prayers of the complainants and dismissed the bill, whereupon the appellants immediately appealed to this court.

Upon this case it will be contended.

I.

That a Receiver is the ministerial officer; the representative and executive hand of the court; his creation grows out of the duty of the court towards all parties before its tribunal, to see that the subject of litigation be not damaged, nor the pecuniary interests of the rightful claimants receive detriment in any way while the property is withdrawn from the absolute control of the litigants during the progress of judicial proceedings.

He occupies the same relations to the property and to the interests of all parties as any other trustee—on behalf of the court, he is charged with the general care, custody, and control of the property.

It was the duty of this Receiver to acquaint himself with the value of, and to rent the property to the best advantage; to keep it in repair, &c., so as to realize the largest current income, and so that if ultimately sold, it should bring the largest price.

His relations, therefore, to the Court, the property, and

those interested therein, were of a confidential and fiduciary character, and this constitutes the Receiver a *trustee.*

A trustee is "one in whom some estate interest or *power in or affecting property* of any description is vested for the benefit of another;" "one to whom property has been conveyed to be managed for another."

Vid Bouvier's Law Dic., Art. Trustee.
Edwards on Receivers, p. 9, and cases cited.
2 Swanst. 125, and 1 Hog. 234.

The Receivership of this purchaser continued necessarily until the judicial sale to him, was repeated and ratified by the Court. Until then, his purchase did not invest him with a title.

2 Daniels Ch. Prac., 1273, Atkinson's Summary, 142.

A Receiver continues until discharged on special order.
Mad. Ch. Pr., 298.

II.

A trustee cannot be the absolute purchaser of the property over which he was or had been the trustee.

By the Roman law, all persons having a trust or charge, were disabled from purchasing the property which was the subject of such trust.

The code Napoleon, Art. 1596, prohibits guardians from purchasing goods of the ward, though offered at public auction; and art. 1597, prohibits attorneys, registers, bailiffs, and other officers of the Court from purchasing anything connected with the suits in the tribunals within the jurisdiction of which they exercise their functions. And the uniform current of American and English cases from the earliest reports down to the present time, and all the most authoritative treatises unite in declaring that this rule of disability applies to trustees by whatsoever name called, and

to all who hold a situation of trust or confidence in reference to the subject of the sale.

III.

Even though the trial be already terminated, as, by the property being placed in the hands of a judicial officer for sale, yet the former trustee cannot purchase except subject to the option of the *cestui que trust* to have a re-sale.

4 Kent's Com., 517, note c.

A fortiori is the trustee incapacitated when he continues to hold the property as a fiduciary at the very time his bid is offered at the judicial sale.

IV

It was not until the case of Campbell vs. Walker, (5 Vesey 680,) that the trustee was permitted to purchase at all Then the rule maintained by Lord Thurlow (Crowe vs. Ballard, 3 Br. Ch. Cases, 120,) was so far relaxed that the trustee might purchase subject to the option of the *cestui que trust* to disaffirm the sale.

Able writers have urged with force, that it were better to have retained the strict rule, because, "It closes at once all the doors against fraud."

Cooper's Just., 652.
9 Vesey 234:

V

The *cestui que trust* is entitled absolutely and unconditionally to have a resale of the property at the risk of the trustee purchaser, if he choose to ask it; and he need not allege, *nor will the Court suffer it to be enquired*, whether in fact the sale was not for full value, or without fraud; or whether the trustee purchaser did or did not avail himself of his opportunity to get more thorough and complete information than the general public could of the value of the

property—or even that the purchase was sanctioned by most of the parties in interest.

Lord Eldon, in ex parte James (8 Vesey, 352,) said, "this doctrine as to purchases by trustees, assignees, and persons having a confidential character, rests upon this: that the purchase is not permitted in any case, however honest the circumstances, the general interests of justice requiring it to be destroyed in every instance, as no court is equal to the examination and ascertainment of the truth in much the greatest number of cases."

Chancellor Kent, (4 Kent's Com., 438,)says, "the Court does not permit itselt to be drawn aside from the application of the rule by any showing of fairness, etc. In any case it must be applied because it is founded on the danger of imposition, and the policy of the law to *shut the door against temptation.*"

See also, Willard's Eq., Juris. 612.
Story on Agency § § 9–210–214.
4 How., 534, Michaud vs. Girod.
4 Cow., 717.
3 Paige, 180.
9 Paige, Van Epps. vs. Van Epps.

VI

It is the fiduciary relation once occupied in respect to the subject of sale that creates the incapacity. The decisions are not tramelled by mere names, but *throughout*, their variety clearly discover the principle binding them harmoniously.

But the very instance of a Receiver's purchase is not without precedent. His incapacity to purchase at any sale of the trust property is well settled on principle and authority.

In Anderson vs. Anderson, 9 Irish. Eq. Rep, 24, the Master of the Rolls, refused to allow the Receiver on his

special application to be a bidder at the judicial sale, and declared that Receivers "should be beyond the reach of all influence or temptation to neglect or compromise their duties; and he further declared, that "upon obvious principles" he "should not be permitted to bid for the lands of which he has previously had the management."

In ex parte James, 8 Vesey, 337 before cited, the Lord Chancellor set aside a purchase of the bankrupt's estate by the Solicitor to the Commission because it was incompatible with his duty to give full information so as to enhance the sale of the property, (p. 350,) and would not allow him to bid at a resale, although he offered to discharge himself from the character of solicitor, *without the consent of all the parties in interest*, and this "because of the information he had previously acquired in his character of solicitor," (p. 353.)

And in Watson vs. Birch, 2 Ves., 53, the case of Price vs. Moscon decided by Lord Hardwick is cited, in which a purchase by the partner of the solicitor was set aside. But the strongest case is, where a *Receiver* had been interested in the *purchase* made by a bidder at a sale *not made by him*, but under a decree to sell and there had been a confirmation of the sale. In that case there were special circumstances of objection, but the Court set aside the sale, "mainly because the Receiver was incompetent to buy."

And the Court further observed, that "although the Receiver might not be chargeable with a y positive misfeasance, or intentional omission of material matters in the recital, yet this case showed what serious mischief might follow if a Receiver in the case, were permitted to purchase under the decree. If *he could* have *an interest in depreciating that estate*, the *value of which* it was his duty to enhance. Such an interest might extend far beyond the

preparation of the rental—it might be the operative principle during the whole term of the Receivership.

Alven vs. Bond.
3 Irish Eq. Rep., 372.

In the fuller report of this same case as found in Flanigan & Kelly's Reports, p. 196, we find the following principles adjudicated:

1st. That purchases by Receivers in the cause, will be set aside after the confirmation of the sale (p. 210.)

2d. That to set aside such a sale, is the introduction of no new principle, (p. 211.)

3d. That a purchase by the Receiver, buying through a third person, is voidable and will be set aside, (p. 211.)

4th. That to guard against temptation, public policy requires, that the Receiver shall not be tolerated as a bidder, "except under some special order obtained on *notice* to the parties interested, and probably with their consent, (p. 214.)

5th. That a Receiver could not either by himself or a trustee for him become tenant under the Court to any lands over which he is acting as Receiver, (p. 224.)

6th. That it was decided in 1836 in White vs. Tommy, that a Receiver cannot purchase for his own benefit, at a sale held under a decree of Court, and this where the sale was by an auctioneer appointed by the Master in Chancery.

7th. That in the case of White vs. Tommy, the Receiver was ordered to bring the money into Court, that the parties interested might elect to take it or obtain a resale, (p 224–5.

In White's Eq. Cases (65 Law Lib. 128,) it is stated, that a trustee cannot purchase before the Master under a decree for a sale.

And in page 142 of same book it is stated, that the disability equally applies "where the trustee buys at a sale under *an adverse proceeding and at a judicial sale*, as at his own sale under his powers as trustee." To the same effect see—

Chapin vs. Weed.
1 Clarke's Ch., 464.
4 Kent's Com., p. 517, note c.
Campbell vs. Johnson, 1 Sandf., 148.
McGinn vs. Shaffer, 7 Watts, 412–18.
Callis vs. Ridout, 7 G. and J, 2, 7.
Bell vs. Webb, 2 Gill, 164, 170.
Evertson vs. Toppan, 5 Johns. Ch., 498.
2 Johns Ch., 260.
65 Law. Lib. 142–3.
3 Paige, 178.
Rothwell vs. Dewees, 2 Black.
6 Wheaton, 109.

These references show that the ~~sale~~ rule in the American Courts is even more stringent than in England.

To make a practical application of the rule to the present case—here is a stranger to the original litigation, brought into the case as a Fiduciary to manage and rent the property. Why, of all the community, is he willing to bid more for the property than any body else? It is clear and palpable that he had some *superior* knowledge over other bidders which made him a successful competitor. It might be possible, *if it were necessary*, to show that this Receiver *managed* in some way to get the property *unfairly*, but the law does not require or enter into such an investigation, but absolutely interdicts the purchase except subject to the approval of the cestuique trusts.

It does appear in the case, however, (Vid. Report of

sale in Jones vs. Stringfellow et al,) that the respondent purchased the property for $80,500, and, by the evidence of his own admission, (Vid. Record p. 9,) that he immediately rented the property for $10,800 per annum, to the tenant still in occupancy of the premises. This rental would extinguish both principal and annual interest of the debt for which the property was sold, in six years. It would liquidate the purchase money with annual interest thereon, in ten years.

These purchases may be set aside by any one of the cestuique trusts.

65 Law Lib. 144.
2 Johns. Ch., 252, 268.

The Court, in ordering a resale, will direct an account to be taken.

65 Law Lib. 145

VII.

We submit, in conclusion, that there is no distinction in principle between the purchase by a Fiduciary, of trust property at a judicial sale and the case where he buys at his own sale—and, therefore, an original bill to set aside the sale well lies by the cestuique trusts or any of them, within a reasonable time after the purchase is made. It is eminently fit that it should be vacated on an original bill, in which the Court will settle the equities of all the parties and decree an account.

Hill Trustees, 539 side page 7.
~~9 Alabama, 278.~~
~~10 Alabama, 274, and~~
9 Penn. St. Rep., 300.
7th Penn. St. Rep., 111–125, and
26 Penn. St. Rep., 67.

WILLIAM A. MELOY,
R. J. BRENT,
For Appellants.

Supreme Court of the United States.

No. 156.

DADE HOOE ET AL., APPELLANTS,

vs.

JESSE B. WILSON.

Appeal from the Supreme Court of the District of Columbia.

Brief for Appellee.

COX & DAVIDGE,

For Appellee.

H. Polkinhorn & Co., printers, D st., bet. 6th and 7th sts., Washington.

Supreme Court of the United States.

No. 156—December Term, 1869.

DADE HOOE ET AL., Appellants,

vs.

JESSE B. WILSON.

Brief for Appellee.

This case is an offshoot of the case of Zephaniah Jones v. Stringfellow et al., recently decided by this Court.

In that case a decree was passed for the sale of certain property in Washington. Jesse B. Wilson was the purchaser at the sale.

The complainants filed exceptions to the ratification of the sale, which were overruled. The sale was ratified, the purchase money paid, and a deed executed to the purchaser.

After this, the complainants filed a bill in the Court below against Wilson, to set aside the sale on, substantially, the same grounds set out in their exceptions to the ratification of the sale. The defendant answered, no proofs were taken, except as to the pedigree of the complainants.

The bill was dismissed, and the present appeal taken from the decree of dismissal.

Points.

I. The relief asked by the bill was two-fold—

First. An injunction was asked against the completion of the sale, by payment of the purchase money, in order to prevent the distribution of the fund, and its consequent loss to the appellants, in case the decree of sale should be reversed; and

Secondly. The Court were asked to set aside the sale to Wilson, on the ground that he had been the receiver of the property under an order of the Court below, and therefore held a fiduciary relation to it, which disqualified him from purchasing.

As to the first, the answer, which was responsive to the bill, showed that the whole purchase money had been paid and a deed given. But all ground for the provisional relief is taken away by the fact that the decree of sale has been affirmed in this Court.

II. The first objection to the final relief asked by the bill is the want of proper parties.

It will be seen from the deposition on p. 8 of Record that certain Robert B. James, Helen Crosson, and two others, (names not given,) who are shown to have been heirs-at-law of Miss Dermott, and interested in the proqerty, are not made parties to the suit. The suit could not be instituted by some, in the names of others. Those not joined are not stated to be unknown, and it is not a case recognized in the books, for a suit for the benefit of parties not joined; as where parties are too numerous, or are members of a large association or of a large class. (See Story's Equity Pleadings, ch. 4.)

III. The same ground of objection to the sale stated in the bill was presented to the Court below, in the shape of exceptions to the ratification of the sale. The Court had

jurisdiction to decide upon the validity of the sale, and did decide it.

The complainants might have appealed from the decision if there was error in it. (See Blossom v. The Milwaukie, &c., Railroad Company, 1 Wallace, 655.) The decision of a Court of competent jurisdiction, from which an appeal might have been taken, cannot be assailed collaterally, as is attempted to be done in this cause. X

also, 5 Wal, 1866

IV. The grounds alleged for the final relief prayed are untenable. The appellee had been appointed receiver, to rent out the property and collect and hold the rents, pending the suit. His duties had no reference whatever to a sale. Another person was appointed trustee to sell, and the decree of sale terminated the appellee's relations to the property. (See 3 Daniel's Ch. Pract., ~~ch. 38, sec. 7.~~) There was nothing in his duties inconsistent with the right to purchase at the sale. It is denied, and there is no proof, that he had any peculiar knowledge or any advantage over other bidders. He did not purchase from the heirs, but at a public sale made by the Court.

ch. 28 Lec. 6 p. 1667

The cases in which a party is held to be disqualified from purchasing on his own account, are those in which he is, substantially, the vendor, at the same time, or, at least, is charged with some duty with reference to the sale. (See cases summed up in Michond v. Girod and al., 4 How., 503.

V. Even if the appellee had no absolute right to purchase, yet it can hardly be denied that in the discretion of the Court he might be admitted to bid and purchase. The Court knew that he had been their receiver, and were certainly at liberty, notwithstanding that, to allow him to purchase. It was a matter for their discretion and their action could not be reviewed on appeal. The theory of a

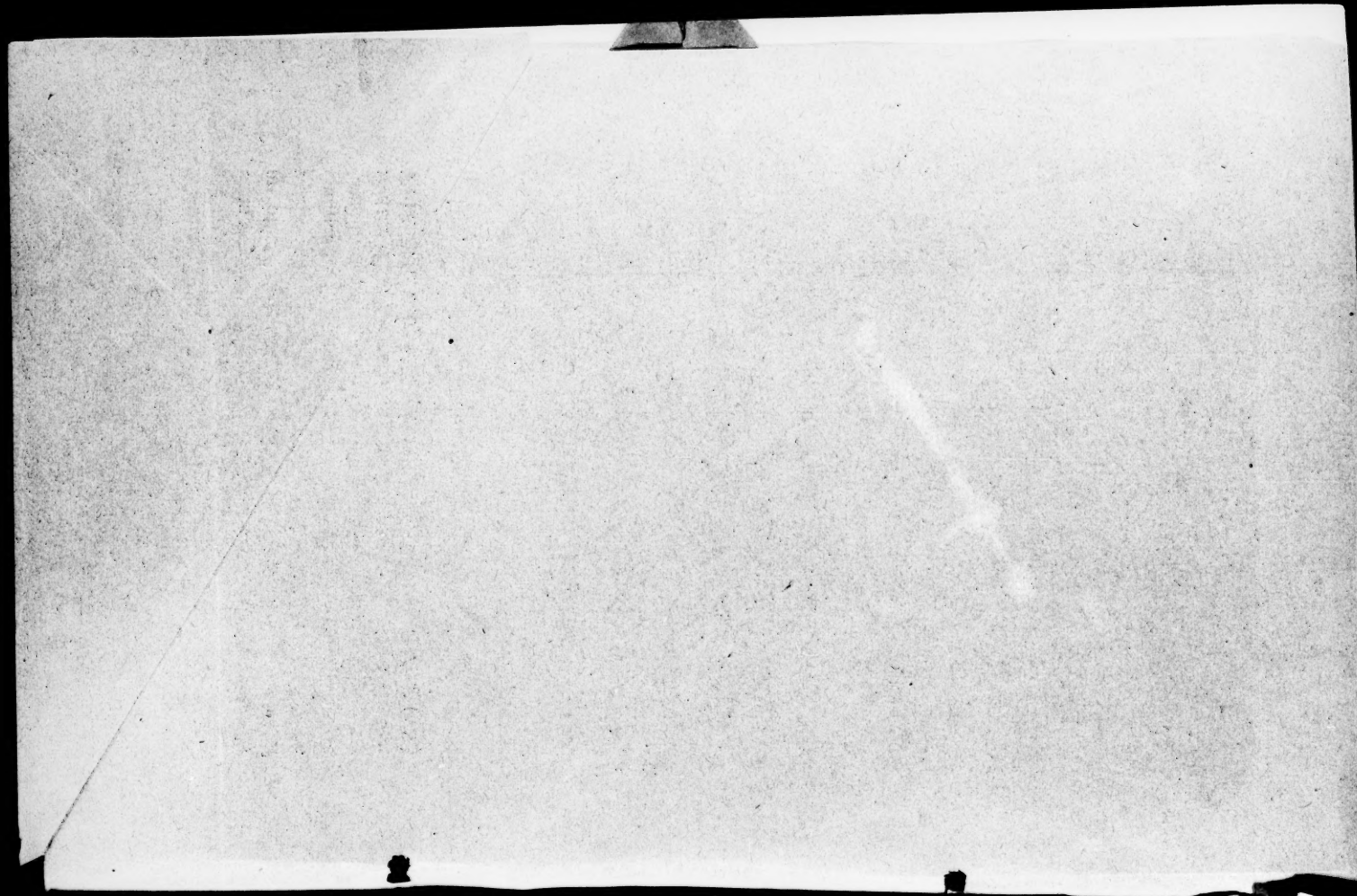
X no fraud is imputed to the appellee in the absence of fraud, a Chancellor, though irregularly, cannot be impeached, except in the original suit—
2 How. 319; 18 How. 158; 8 Paige 369
10 Paige 248; 7 Wall 559

chancery sale is, that the bid at the public sale is merely an offer to the Court, which is accepted by their order of ratification of the sale. As the Court are presumed to be competent to protect the interests of all parties, they are certainly competent to accept an offer from anybody, no matter what his relations to the property. (See Hill on Trustees (p. 536,) citing Campbell v. Walker, 5 Ves., 678.)

COX & DAVIDGE,

For Appellee.

6. The matter in dispute i.s. "whether the property shall be again offered for sale, is not averred to be of the value of $1.000 or any value. Hence, no jurisdiction —



SUPREME COURT OF THE UNITED STATES.

No. 368.

THE STEAM-TUG QUICKSTEP, &c., ELIAS RUNYON ET AL. CLAIMANTS, APPELLANTS,

vs.

CHRISTOPHER BYRNE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Libel	1	1
Stipulation for libellant's costs	9	3
Monition	11	4
Claim of owners	13	5
Stipulation for claimants' costs	15	6
Bond to United States marshal	17	6
Order, that the appearance of defendant be entered	19	8
Answer of claimants	21	8
Cause heard	29	10
Testimony of Christopher Byrne, with exhibits	32	12
Edward Pendergrast	57	21
Ephraim Kempton	78	29
Justin F. Tallmadge	78	29
Christopher Byrne, recalled	79	29
William Lowe	80	30
Hugh Gallagher	84	31
Joshua S. Ludlum	91	34
John Hayne	109	41
Thomas Lebengood	113	43
George W. Shadley	119	45
Charles Beardsley	122	47
William Smith	125	48
William Rodan	131	50
Summers Warwick	135	51
Ephraim Kempton, recalled	141	54

	Original.	Print.
Testimony of Hugh Gallagher, recalled	142	55
John Hayne, recalled	146	55
Amos K. Evans	146	56
George W. Heckman	151	58
Robert T Brown	154	59
Timothy Seaman	158	61
Ralph R. Osgood	160	62
James Stiles	162	63
John Strong	164	64
John Bergen	165	64
Joseph P. Barnes	167	65
Interlocutory decree and order of reference	169	66
Testimony of Christopher Byrne before referee	171	67
Commissioner's report	173	68
Final decree confirming commissioner's report, and summary judgment on bond.	175	69
Bond for costs on appeal	179	70
Affidavit of service of notice of appeal	181	71
Petition of appeal to United States circuit court	183	71
Cause heard in United States circuit court	187	73
Decree	189	73
Petition of appeal to United States Supreme Court	191	74
Bond for costs on appeal	195	75
Citation	197	76

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Wednesday, the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable Samuel Blatchford, district judge.

CHRISTOPHER BYRNE
vs.
THE STEAM-TUG "QUICKSTEP," her tackle, &c. } 19—314.

1865, Nov. 17th.—The libellant files his libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the United States district court for the southern district of New York, in admiralty:

The libel of Christopher Byrne, of New Brunswick, in the State of New Jersey, owner of the canal-boat "Citizen" of New Brunswick, against the steam-tug Quickstep and all persons intervening for
2 their interest therein, in a cause of damage, civil and maritime, alleges as follows:

First. Your libellant alleges that he was at the time of the loss of his said canal-boat Citizen, as hereinafter set forth, the sole owner of said boat, and had, before such loss, employed her principally in carrying and transporting cargoes between the city of New York and divers ports and places in New Jersey and elsewhere; and that said canal-boat had no motive power of her own.

Second. That on the eighteenth day of October, 1865, your libellant loaded his said canal-boat with seven thousand two hundred and nine bushels of corn, at the foot of Clarkson street, in the city of New York, under a contract with the owners of said corn to carry, transport, and convey the same for a freight of one cent and a half per bushel from said place of lading to the port of New Brunswick, and there right and true delivery make of the same.

Third. That thereupon your libellant made a contract with the said steam-tug Quickstep, through her agent, to tow the said canal-boat of your libellant, so laden as aforesaid, from the said place of lading to the port of New Brunswick for the sum of thirty-two dollars and fifty cents.

3 Fourth. That thereupon and afterwards, and about one o'clock in the afternoon of the said 18th day of October, the said steam-tug hitched on to the said canal-boat of your libellant, so loaded as aforesaid, pursuant to the contract aforesaid, and proceeded to tow the same on the voyage from New York to New Brunswick; and at such time the weather was very fine, and everything favorable for a speedy voyage.

Fifth. That the said steam-tug, in place of proceeding direct to New Brunswick with the canal-boat of your libellant, diverged from her course when near the Battery, and proceeded with said boat to Atlantic basin, in the city of Brooklyn, and there left the canal-boat of your libellant; the master of said steam-tug stating that he intended to leave her there some three or four hours. That your libellant was obliged to tie up his said boat, having no motive power to proceed, but he alleges that the said steam-tug had no right to tow him into Atlantic basin and

delay the voyage, and that the said tug is liable for any damage resulting from such delay.

Sixth. Your libellant further alleges that afterwards, and about one o'clock in the morning of the nineteenth day of October, and after a delay of more than ten hours, the said steam-tug again hitched on to the canal-boat of your libellant together with four other loaded boats and one light one, and that the position of said boats was as follows: The boat of your libellant was on the port side of said steam-tug and lashed fast to her; one loaded boat was along side of the boat of your libellant, and another loaded boat was hitched on behind the two boats on the port side, and sufficiently far off not to interfere with the working of the rudder of the boat of your libellant. On the starboard side of said steam-tug she had two loaded boats and one light boat hitched in the same manner as the boats on the port side.

Seventh. And your libellant further alleges that at the time the said steam-tug commenced to tow the said canal-boat of your libellant from Clarkson street, and at all times thereafter while being towed, until the time of the loss as hereinafter set forth, she was tight, strong, and staunch, and properly manned and attended to, and entirely under the control and direction of said steam-tug, and dependant upon her for her motive power and safety. That your libellant knew nothing about the number of boats that said steam-tug proposed to tow, and in his judgment and in his belief the said tug was guilty of carelessness in attempting to tow so many heavy boats, and was unable to properly tow the same, and alleges the fact so to be.

Eighth. Your libellant alleges that while proceeding upon said voyage, and when they had arrived about off Robbin's reef light, in the harbor of New York, and at about four o'clock in the morning of said 19th of October, the boat hitched the boat of your libellant by some means became detached, and thereupon the said steam-tug attempted to pick her up, and to that end commenced to back in so negligent and careless a manner as to endanger the safety of the boat of your libellant; that your libellant protested and warned the master or those in charge of said steam-tug that by so doing they would sink his boat, but the said [said] parties paid no heed to such protest or warning, but continued to back said steam-tug, and handled and managed the same in such a careless, negligent, and unseamanlike manner that the said steam-tug struck against the boat of your libellant with great force and violence, breaking in her starboard side, and causing her to fill with water and sink, to the great damage of your libellant.

Ninth. Your libellant further alleges that he did all in his power to prevent the said loss; that the same was without fault on his part, and occurred entirely through the carelessness and mismanagement of the master and mariners on board of the said steam-tug; and that the said steam-tug is liable for the loss of said canal-boat and her cargo, and should be compelled to pay the damages sustained. That the value of the said canal-boat was, with her equipage, freight, and the personal property of your libellant on board, about the sum of two thousand dollars, and that the damage done to the cargo was about the sum of six thousand five hundred dollars; and that your libellant as carrier is entitled and authorized to file this libel to recover the damage done to said cargo, as well as that sustained by himself, and claims to recover from the said steam-tug the full sum of eight thousand five hundred dollars, with interest.

Tenth. That since the sinking of his said boat with her cargo, the same has been raised, and he has used his utmost diligence to make the amount of loss as small as possible.

Eleventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, and that said steam-tug Quickstep is now in the port of New York and within the jurisdiction of this court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steam-tug Quickstep, her engines, tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages aforesaid, and that said
7 vessel may be condemned and sold to pay the same, and that the libellant may have such further or other relief as in law and justice he may be entitled to receive.

CHRISTOPHER BYRNE.

Sworn to before me, Nov. 17, 1865.

GEO. F. BETTS,
U. S. Com'r.

TOWNSEND SCUDDER,
Proct. Libel't.

[U. S. 5-c. int. rev. stamp cancelled.]

Endorsed: 19—314. U. S. district court. Christopher Byrne, libel't, ag'st the steam-tug Quickstep, &c. Libel. Townsend Scudder, proct. libellant, 66 Wall st., N. Y.

Filed Nov. 17th, 1865.

8

9 District court of the United States for the southern district of New York.

[Filed the 17th day of November, 1865.]

Stipulation for libellant's costs.—Entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, by Christopher Byrne against the steam-tug Quickstep, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said st.-tug, &c., may be condemned & sold to pay the demands of said libellant; and the said libellant, and Townsend Scudder and James C. Carter, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred & fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars; conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court or, in case of appeal, by the appellate court.

CHRISTOPHER BYRNE.
TOWNSEND SCUDDER.
JAMES C. CARTER.

Taken and acknowledged this 17th day of November, 1865, before me.
GEO. F. BETTS,
U. S. Commisioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Townsend Scudder & James C. Carter, parties to the above stipulation, being duly sworn, each doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

TOWNSEND SCUDDER.
JAMES C. CARTER.

Sworn to, this 17th day of November, 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 17th day of November, 1865.
GEO. F. BETTS, *Clerk.*

10

11 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 17th day of November, in the year of our Lord one thousand eight hundred and sixty-five, by Christopher Byrne against the steam-tug Quickstep, her tackle, engine, &c., damages $8,500, with interest, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steam-tug or vessel, her tackle, &c., may be cited in general and special to answer the premises, and, all proceedings being had, that the said steam-tug or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said steam-tug or vessel, her engine, tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the southern district of New York, on the 5th day of December, 1865, at eleven o'clock in the forenoon of the same day, (if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter,) then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 17th day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

GEO. F. BETTS, *Clerk.*

TOWNSEND SCUDDER, *Proctor for Libellant.*

[50-c. int. rev. U. S. stamp.]

12 (Indorsed:) Vol. 19, page 314. Southern district of New York, United States district court. Christopher Byrne vs. the steam-tug Quickstep, her tackle, &c. Monition ret'ble Dec'r 5th, 1865. Townsend Scudder, proctor for libellant.
Filed Dec'r 5th, 1865.

I hereby depute Patterson to execute the within process.
Dated Nov. 17th, 1865.

R. MURRAY, *U. S. Marshal.*

In obedience to the within monition, I attached the steam-tug Quickstep, tackle, &c., therein described, on the 17th day of November, 1865, and have not given due notice to all persons claiming the same that this court will, on the 5th day of December, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.
Dated December 5th, 1865.

R. MURRAY, *U. S. Marshal.*

13 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the twentieth day of November, in the year our Lord one thousand eight hundred and sixty-five:
Present, the Honorable Samuel R. Betts, district judge.

ELIAS RUNYON *et al.*, OWNERS OF steam-tug "Quickstep," *asm.* CHRISTOPHER BYRNE.

And now Elias Runyon, for himself and Wm. McDonald, Evert F. Huyler, Isaiah Rolfe, and John H. Rolfe, and John R. Van Arsdale, the owners of the steam-tug Quickstep, intervening for the interest of himself and co-owners in the said steam-tug Quickstep, appears before the honorable court and makes claim to the said steam-tug, &c., as the same are attached by the marshal under process of this court, at the instance of Christopher Byrne; and the said Runyon avers that he is in possession of the said steam-tug at the time of the attachment thereof, and that the persons above named are the true and bona-fide owner of the said steam-tug Quickstep, and that no other persons are the owners thereof; the true and ; wherefore he prays to defend accordingly.

ELIAS RUNYON.

Sworn to and subscribed, this 20th day of Nov., A.D. 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

WM. J. HASKETT, *Proctor for Claimant.*

14 (Indorsed:) Vol. 19, No. 314. United States district court for the southern district of New York. The steam-tug Quickstep, &c., asm. Christopher Byrne. Wm. J. Haskett, proctor for claimant. Claim of owners.
Filed the twentieth day of November, 1865.

15 District court of the United States for the southern district of New York.

[Filed the 21st day of Nov., 1865.]

Stipulation.—Entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 17th day of November, in the year of our Lord one thousand eight hundred and sixty-five, by Christopher Byrne against the steam-tug Quickstep, her engine, &c., for the reasons and causes in the said libel mentioned, and praying that said steam-tug, &c., may be condemned and sold to pay the demand of said libellant, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by Elias Runyan for self and co-owners:

Now, therefore, it is hereby stipulated and agreed, for the benifit of whom it may concern, that the stipulators undersigned shall be and

16 each of them is hereby, bound in the sum of two hundred & fifty dollars conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or, upon an appeal, by the appellate court.

ELIAS RUNYON,
For self & other owners.
JOHN R. FORD.
C. MEYER.

Taken & acknowledged, this 21st day of Nov., 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John R. Ford & Christopher Meyer, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN R. FORD.
C. MEYER.

Sworn to, this 21st day of Nov., 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 21st day of Nov'r, 1865.
GEO. F. BETTS, *Clerk.*

17 District court of the United States of America for the southern district of New York.

[Filed the 21st day of November, 1865.]

Know all men by these presents, that we, Elias Runyon, John R. Ford, & Christopher Meyer, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of seventeen thousand dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind

ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 17th day of November, in the year of our Lord one thousand eight hundred and sixty-five, by Christopher Byrne, libellant, against the st.-tug Quickstep, her tackle, &c., for the sum of eight thousand five hundred dollars, on which process of attachment has issued; and the said steam-tug, &c., is in custody of the marshal under the said attachment, and Elias Runyon has applied for a discharge of said st.-tug, &c., from the custody of the marshal, and has filed a claim claiming the said st.-tug, &c., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above-bounden Elias Runyon, John R. Ford, and Christopher Meyer shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ELIAS RUNYON,
For self & other owners.
JOHN R. FORD. [L. S.]
C. MEYER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 21st day of Nov., 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John R. Ford & Christopher Meyer, being duly sworn, each depose and say that he resides in the city and southern district of New York, and that he is worth the sum of thirty-four thousand dollars over and above all his just debts and liabilities.

JOHN R. FORD.
C. MEYER.

Sworn to, this 21st day of Nov., A. D. 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 27 day of December, 1865.

SAM'L R. BETTS.

Recorded the 27th day of Dec'r, 1865.
Approved:

TOWNSEND SCUDDER,
Proct. Lib'l't.

18

19 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the city hall, in the city of New York, on Tuesday, the 21st day of November, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Samuel R. Betts, dist. judge.

THE ST.-TUG "QUICKSTEP," &c., *ads.* CHRISTOPHER BYRNE. } 19—314.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge, on motion of Wm. Jay Haskett, esq., proctor for the claimants, it is ordered that the appearance of the claimants be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

(Endorsed:) Vol. 19, No. 314. United States district court for the southern district of New York. The st.-tug "Quickstep," &c., ads. Christopher Byrne. W. J. Haskett, pro. cl'm'ts. Order to marshal. Filed the 21st day of November, 1865.

20

21 In admiralty.

To the Honorable Samuel R. Betts, judge of the U. S. district court in and for the southern district of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The answer of Elias Runyon, William McDonald, John R. Van Arsdale, Isaiah Rolfe, Evert Hyler, and John Rolfe, claimants of the steamer "Quickstep," to the libel of Christopher Byrne against the said steamer, answering says:

First. That as they have not sufficient information to form a belief as to the fact of the ownership of the said boat Citizen, and to her employment in manner and form as in the first article of said libel alleged, leave the libellants to the proof thereof.

Secondly. They admit that the libellant applied to the master of the steam-tug to tow the said barge from the harbor of New York to New Brunswick for the sum of $32 50, and that the said towage contract was according and subject to the usages and customs of the towing trade in the harbor of New York, in the towage of vessels of her class, and which said custom will more fully appear in this answer.

Thirdly. They deny the material allegations of the 7th, 8th, & 9th articles of said libel, and aver that the facts of the case are not
22 correctly stated in said libel, but aver the facts to be, as they are informed and verily believe and thereupon state, that the persons in charge of said canal-boat, well knowing the customs and usages of the towing trade of the harbor of New York, did on the 18th day of October, request the persons in charge of the steam-tug to tow their said boat from the port of New York to the port of New Brunswick, and that the said tug did take the said boat in tow and towed her to the Atlantic basin, to a place of safety, until she could make up her tow for the port of New Brunswick, and that when the said tow was thus made up, at about one o'clock a. m. of the 19th instant, the weather then being good, the said tug with a fleet of boats in tow started on her voyage, and at about 4 o'clock of the said 19th inst., when about abreast of Robbin's reef, a heavy storm and gale of wind suddenly arose, and the heavy seas broke the fastening forward lines of the said Citizen to the boat Wide World and then her head sheered out into the eastward and the sea washed over her, and not being properly equipped with good and sufficient lines,

and without her hatches being down or properly fastened, and her crew having abandoned her, she shipped several heavy seas, filled, and went down; and they deny that the said tug struck the said boat, or
23 injured her in manner and form as by the said libellants alleged, and that these claimants deny that the said tug attempted to pick up the boat which became detached from the stern of the Citizen, or did any act whatever and particularly as charged in said libel, and did not commence to back for that purpose, but aver the fact to be, that the said tug only commenced to back when the forward bridle line—holding the bows of the Citizen and the boat Wide World together—parted, and their bows separated so as to endanger the safety of both; and that the said backing was skillfully made for the purpose and intent of bringing their bows together, as the gale and seas from the south contributed to increase their separation, and thereby endangered their safety and particularly that of the Citizen.

Fourthly. These claimants deny, on information and belief, that the said canal-boat Citizen was tight, strong, staunch, and properly manned and attended to; but aver the fact to be, that the persons in charge of the said boat furnished the lines which attached her to the tug, and that they were not sufficient for the purpose of safely securing her against the action of the storm and seas at the time the said forward line connecting her with the inside starboard tow broke, and let
24 her head sheer to the eastward, and that she was thus rendered unmanageable; and that as soon as she parted the said forward line, her crew or the persons having charge of her abandoned her before she suffered any injury from the seas; and that by the said abandonment she was left perfectly helpless and unnecessarily exposed to the perils of the seas which then surrounded her; and they further deny that the said boat Citizen was a tight, strong, and staunch boat, but aver the fact to be that she was an old and rotten Schuylkill barge, built for the coal trade, and totally unfit for carrying grain in a heavy sea, or to meet, when deeply laden, a storm in a bay like the Bay of New York.

Fifthly. These claimants aver that the said libellant well knew that the customs and usages of the towage trade of the port of New York to be, that the tugs in said business proceed to make up their tows from different wharves, piers, slips, and basins of the port of New York, comprising the city of Brooklyn & Williamsburgh, as the mercantile necessity thereof demands; and that they pick them up as most convenient and safe; and that they are often called upon to deposit them at different places of safety until they can make their arrangements to complete the whole tow, which being done they start on their
25 contemplated voyage.

And these claimants aver that the said libellant well knew the said custom and usages of the towing trade of the port of New York, and that the said tug when she picked her up at Clarkson street, would not tow her singly and directly to New Brunswick, and that he was informed that his said boat would be towed to Atlantic basin to make up a tow; and these claimants deny that they were guilty of negligence in attempting to tow so many heavy boats; but aver that the said tug had two boats less than her usual tow at the times herein mentioned; and that of the said tow one was light and three lightly loaded, and that only two were full-loaded boats; and these claimants aver that they exercised great care in the towage of the said boat, and that no acts of theirs contributed to the loss thereof, and that the said tug was able to properly tow the said tow and a larger number of boats.

Sixthly. And these claimants deny that when their tug picked up the

said boat Citizen at Clarkson street that the weather was fine, but aver the fact to be that the wind was southeast, blowing heavily, and that it would have been unsafe with a boat like the Citizen, deeply laden with grain, to have been towed across the Bay of New York at the time.

Seventhly. That they deny that the said loss was without fault
26 of said libellant, and deny that the said loss occurred through the carelessness and mismanagement of the tug or its crew, or from acts of either of them; and they deny that the said tug is liable for the loss of said canal-boat and her cargo; but aver that the said loss occurred by the storm and gale of wind which prevailed at the time of her sinking, and by her inherent weakness, rottenness, and from the careless and negligent manner in which she was navigated, and by the abandonment of the master and crew at the moment of her perils, and by the improper exposure of her cargo to the seas from want of proper hatches and their fastenings.

Eighthly. That these claimants are informed and believe that the insurance company in which the said grain was insured paid the owner thereof the loss on their policy as a loss by the perils of the seas, and that the said libellant has not now nor never has any interest therein.

Ninthly. That these claimants deny all the other material allegations of said libel not herein specifically denied.

Lastly. These claimants pray that the said libel may be dismissed with costs.

ELIAS RUNYON,
One of the Claimants.

Sworn to before me this 27th day of December, 1865.
[SEAL.] JOHN LANKTREE,
Notary Public in & for the City & County of New York.

WM. JAY HASKETT, *Proctor for Cl'm'ts.*
C. DONOHUE, *Adv.*

27 Endorsed: 19—314. In admiralty. U. S. district court, south'n district of New York. Elias Runyon et al., owners and cl'ts of the tug Quickstep, ads. Christopher Byrne, libellant. Answer. Wm. Jay Haskett, proc. for cl'ts.

Filed Dec'r 27th, 1865.

28

29 At a stated term of the district court of the United States of America for the southern district of New York in the second circuit, held at the United States court-rooms in the city of New York, on Thursday, the 14th day of February, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable William D. Shipman, dist. judge.

CHRISTOPHER BYRNE
vs.
STEAM-TUG "QUICKSTEP," &c. } 19—314.

This cause being called in its order on calender, ordered hearing; pleadings read.

Evidence for libellant:

Christopher Byrne..... Sworn.
Edward Pendergrast..... "
Cause adj'd.

FEB'Y 15, 1867.—Cause continued.

Evidence for libellant:

Edward Pendergrast	Recalled.
Ephraim Kempton	Sworn.
Justin F. Talmade	Affirmed.
Christopher Byrne	Recalled.
William Low	Sworn.
Hugh Gallagher	"
Joseph P. Barnes	"

Evidence for claimants:

Joshua L. Ludlum	Sworn.
John Hague	"
James Levengood	"
Georg W. Shalday	"
Chares Beardsley	"
William Smith	"
30 William Rodan	Sworn.
Somers Warwick	"

Evidence for libellant:

Ephraim Kempton	Recalled.
Hugh Gallagher	"

Caused adj'd to Tuesday next.

TUESDAY, *Feb'y 19th.*—Cause resumed.

Evidence for claimants:

Amos K. Evans	Sworn.
George W. Heckman	"
Robert Brown	"
John Hague	Recalled.
Timothy Seaman	Sworn.
Ralph R. Osgood	"
James Stiles	"

Evidence for libellant:

John Strong	Sworn.
John Berger	"
Joseph P. Barnes	Recalled.

Mr. Charles Donohue argues for claimants.
Mr. T. Scudder " " libellants.
Briefs to be handed to court.
C. A. V.

31 [Mr. Haskett.]

United States district court.—Before Hon. Judge Shipman.

CHRISTOPHER BYRNE
vs.
THE STEAM-TUG QUICKSTEP.

FEB. 14, 1867.

For libellants, Townsend & Scudder.
For claimants, W. Jay Haskett and Mr. Donahue.

Index.

	Direct.	Cross.
Christopher Byrne	2	11
Edward Pendergast	29	35

Warburton, Underhill & Bonynge, stenographers, 117 Nassau st., & 39 Park row, N. Y.

32 Christopher Byrne, being duly sworn, testified, (direct examination by Mr. Scudder:)

I am the libellant in this case, and owner of the canal-boat "Citizen." I employed the steam-tug Quickstep to tow me from New York to New Brunswick in October, 1865. I made the bargain at Clarkson street dock, North river, with the captain of the tug; his name was Ludlow; I did not know it at the time. He agreed to tow me from Clarkson street to New Brunswick for $\$32\frac{50}{100}$. I asked him if he was going right away; he said, "Yes." I was going by the regular tow, but that he said he was going out.

Q. State all the circumstances that took place.

A. I had brought a load of coal from Richmond, and took on a load of about 7,000 bushels of grain in New York. I was down by the East river after getting the bill of lading, and I went into the office of Easton & McMahon, and asked them if they had a tow going right away

33 to New Brunswick. He said that the "Quickstep" was going. I said that I had a load of grain, and if she was going right away I would like to go with her. He said he would send her right up after me. The tug came up, and I made a bargain with the captain. He fastened on to me, and I made sure that he was going to New Brunswick. When he got over to Atlantic dock, he landed me there. I asked him how long he was going to leave me there; he said 3 or 4 hours. He went away, and I did not see him again until near dark. Then he came into the slip with another boat. About 1 o'clock that night, he made up his tow; he put me along side. We went along very good until we came near Rollins' reef light-house. When we got near the light-house, the boat behind me broke loose. The captain of the tug stopped, and was going to back. I was on the deck of my boat, and said to him, "If you back, you will sink the boat." He did not mind me. The bowline, which was fast, gave way; the tug got into the trough of the sea, and with the surging, she pitched on us and made two holes in the plank of the boat. I told him that he would sink us. The holes were starboard side, near the stern.

Q. What was the condition of the weather?

34 A. It rained that night when we were at Atlantic dock, and blew a little, but not to hinder us until we got down there to Robbin's reef.

Q. How are tows made up, whether by the tug-boat or by the hands that are on the boats that are towed?

The captain and hands of the steamboat always makes them fast in the way that suits them. They always make the lines fast.

Q. Whose lines do they use?

A. The boat's lines.

Q. Did they use your lines that night?

A. Yes, sir.

Q. The captain of the Quickstep made you fast?

A. Yes, he and his men; they put me on the port side.

Q. What kind of lines had you?

A. Tip-top lines; a nearly new steamboat line, a good tow-line, a hawser, and good rigging, and lines of all descriptions that are used on canal-boats.

Q. When he backed on you, did your hear the blow yourself?

A. Yes; I heard the plank breaking in.

Q. What become of the canal-boat afterwards?

A. The canal-boat was fast to the tug at this time when I heard the plank going in. I told the captain the boat would go down; she was in the trough of the sea, going up and down.

Q. Had his broached to or fallen off in the trough of the sea?

35 A. Yes; after the bowline parted and the boat got out a little, the captain took an axe and cut the other lines, and let them go.

Q. When did you first warn him?

A. As soon as he went to stop to back; I was on deck at the time.

Q. Do you know how the after boat became detached?

A. She parted her lines, I suppose.

Q. What was the after boat attached to?

A. One line attached to my boat, and another line to the other boat along side.

Q. About how long was your canal-boat?

A. I guess something lire one hundred feet.

Q. How long is the tug?

A. I cannot tell you that; I good-sized tug.

Q. Did the bow of the canal-boat extend beyond the bow of the tug?

A. Yes; a good way.

Q. And the stern of the canal-boat, did it extend beyond the stern of the tug?

A. No; the stern of the boat and the tug were nearly even, but the bow of the canal-boat was out further than the tug.

Q. What became of your canal-boat?

A. She sank there.

Q. About how long did she remain afloat after you heard the blow on her plank?

36 A. As soon as the captain cut these boats loose, he made for a harbor with the other boats. We thought all would get lost. When he left the other boats in the harbor, he came back and took up the boats that were loose.

Q. Was the captain in the usual channel where tugs go, considering what kind of a night it was?

A. No; the regular tow-boats go on the flats. When it is rough, they go another course. I have gone the other way.

See former statement.

Q. Did the wind increase after you left Atlantic dock?

A. No; there was no increase that I know of.

Q. How was your boat as to strength?

A. All in good order; she never drew a pump; she was in tip-top order—decks, hatches, and everything.

Q. Did she leak at all before that?

A. No, sir.

Q. When had her pumps been tried before this blow?

A. We tried the pumps about 15 minutes before, and there was not a tent of water in her that we could get out of the pump.

Q. How long have you been on canal-boats and being towed?

37 A. I am boating about 27 years, on and off.

Q. And have been towed in the harbor here, and to other places?

A. Yes, sir; to all parts; to Albany and Troy, and all around the harbor.

Q. In the making of the tow, is not the tow under the entire command of the captain of the tug?

(Objected to as leading.)

Q. What is the rule in regard to the government of tows in making them up?

A. I never had anything to do with it; the captain and crew and pilot of the tug had all to do about it.

Q. You are under their complete control?

A. Yes. I had nothing to say about it.

Q. Was that tow properly made up that night?

A. No, sir; I do not think it was.

Q. Was that tug capable of towing that number of boats that night, in your opinion?

(Objected to; admitted; except.)

A. No, sir.

Q. What did you say to the captain in regard to the making up of the tow?

A. I did not say anything to him; on account of being so used to towing, I knew the captain would not mind me.

Q. State how the weather was that night from the time you left the Atlantic dock until this accident happened?

38 A. It blew a little off the Brooklyn side; I think that was the way the wind blew; we had no great difficulty in getting down along until this boat broke loose; we found no bother at all until this boat got detached.

Q. What would have been the effect on the tow if, instead of attempting to back, the tug had gone directly ahead?

A. This boat would have been all safe; we would have had no trouble; it was the backing did it.

Q. How high were the top sides of your canal-boat out of the water?

A. To the best of my opinion, nearly three feet.

Q. Did the sea break over you on the passage?

A. No; only a little splash on the bow.

Q. A little spray?

A. Yes, sir.

Q. Did you see the canal-boat after she was sunk?

A. Yes, sir; she was raised.

Q. What was the appearance of her starboard side?

A. Two holes, just where I heard it breaking in.

39 Q. Where were you at the time you heard the breaking-in?

A. Standing on the side of the companion way.

Q. You state that you warned the captain not to back?

A. Yes, sir.

Q. Did he make any reply to you?

A. He did not make any reply.

Q. Who was at the wheel at the time?

A. The captain was at it, I guess; I jumped on the deck of the tug when I found the boat was going to sink, and I saw him coming out of the wheel-house; he thought to get a line across; the boat was in a trough of the sea; when he saw she was going down, he got an axe an cut her loose.

Q. How long after you heard the blow before the canal-boat sank?

A. I cannot tell; he took the boats that held on into harbor, and then came back in the morning and took the other boats that were adrift.

Q. Did you see the canal-boat go down?

A. No, sir; I came into the harbor with the tug; it was so dark I could not see.

Cross-examined by Mr. Donohue:

40 Q. Look at this diagram and see if it is about the way the boats were lying and fastened together.

A. The lines were the same as they always make up; they had a line across from one canal-boat to the other; he had a regular steamboat line, bow and tow line and stern line. I do not know anything about the lines of the other boats, only my own. I cannot say how they are.

Q. Otherwise the diagram shows the way the boats lay towards each other?

A. Yes, sir; two abreast each side.

Q. Leaving out the lines, that is about the way they lay?

A. Yes; that is the same way we were.

(Diagram marked Ex. No. 1, A. F. W.)

Q. You do not know about any lines except your own?

A. No, sir.

Q. The bridle line you do recollect about, the line from your bow to the bow of the other boat?

A. Yes, sir.

Q. And you recollect the lines from yourself to the tug.

A. Yes, sir.

Q. And these were as pointed out here?

A. Yes, sir.

Q. You went to Easton McMahon, Couenties slip?

41 *Eh. No.* 1, *A. F. W.*

[For diagram see page 41 of the original.]

42

43 A. Yes, sir.

Q. Did you know them?

A. Yes, sir.

Q. Had you ever gone with them before?

A. No, sir.

Q. Nor with their boats?

A. I had once, but never to New Brunswick; I had round the harbor.

Q. What other lines were running to New Brunswick?

A. The Camden and Amboy.

Q. Any other?

A. There were some boats running there last summer.

Q. What you call wild boats?

A. I don't know what they call them.

Q. You went in and asked them if they had a tow going out?

A. Yes, sir.

Q. Afterwards the captain came up to see you with the boat?

A. Yes, sir.

Q. Had you ever towed with the Quickstep before?

A. No, sir.

Q. Did you know the captain?

A. No, sir.

Q. When he came there, what did he tell you?

A. He was looking for the boat; I had left the name of the

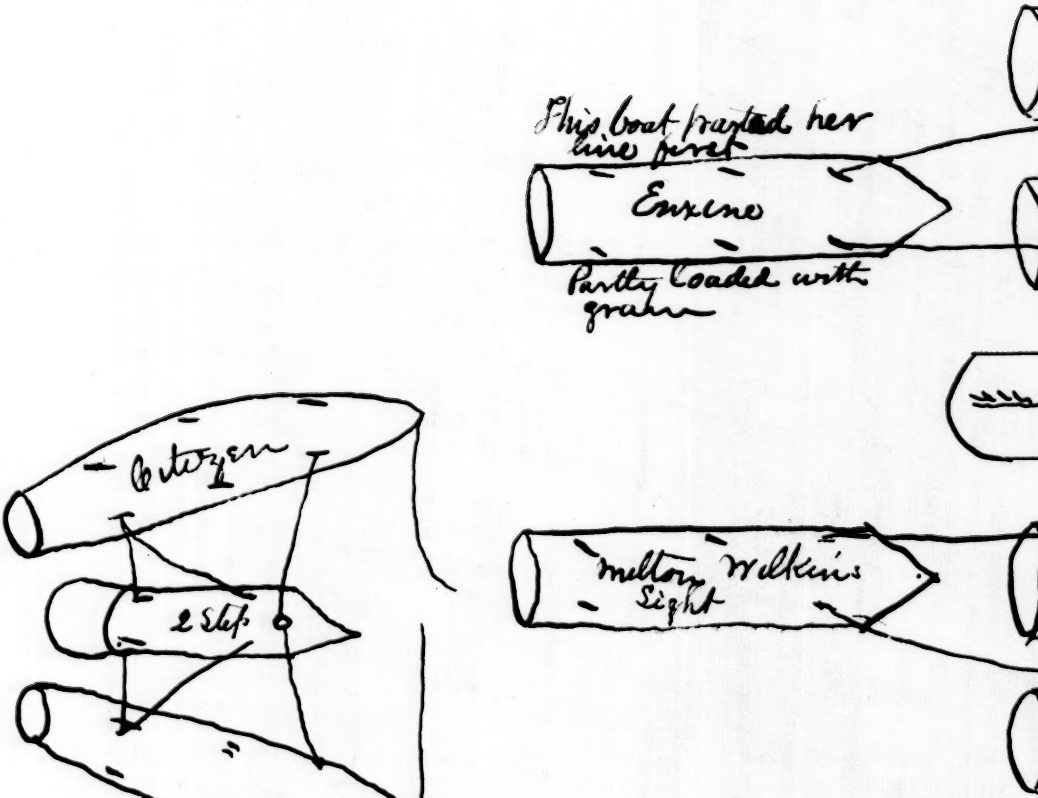

Ship boat towed her
line first
Enxeno
Partly loaded with
grain
Between
2 Steps
melton Wilkins
Sight

Fig. 25

Gen Hancock
loaded with iron
Citizen
loaded with grain
Stern Line
Fig 25
Stern Line
Bridle Line
Bridle Line
Bridle World
loaded with sugar
Michigan
loaded with grain

44 boat; he came along side of the Citizen at Clarkson street; I asked him if he was going to New Brunswick, and he said yes.

Q. Did you ask him how much he would charge?

A. I did.

Q. And he told you?

A. Yes, sir.

Q. Was anything more said?

A. I asked him if he was going to New Brunswick, & he said he was.

Q. Was anything more said?

A. Nothing more than we made a bargain; he asked $35 for the tow, and he did it for $32 50.

Q. How did he take you at Clarkson street?

A. Along side of him.

Q. And towed you over to the Atlantic dock?

A. Yes, sir.

Q. Did you have any conversation with him or any one on board after leaving Clarkson street until you got to Atlantic dock?

A. No, sir.

Q. Were you on the tug or on your boat after leaving Clarkson street?

A. On my own boat.

Q. Lashed along side of the tug?

A. Yes, sir.

45 Q. You had no conversation with the captain of the tug after leaving Clarkson street until you got to Atlantic dock?

A. No, sir.

Q. Did he take you inside the dock?

A. He did.

Q. When you got over to Atlantic dock, what was the first thing done?

A. He left me along side another boat; I don't know whether it was one of the tow or not.

Q. Was anything said up to the time he left you there?

A. When he landed me there I asked him how long he was going to leave me, and he said 3 or 4 hours.

Q. Did you ask him where he was going?

A. No, sir.

Q. Did you know where he was going?

A. No, sir.

Q. Did you know he was going after other boats?

A. No, sir.

Q. Did you have any idea on the subject?

A. No, sir.

Q. No idea on the subject one way or the other?

A. No, sir.

Q. You did not interest yourself about where he was going or what he was doing?

A. No, sir.

46 Q. Did you see him come back with any other boat?

A. I think he brought a boat in about dark; he landed her in the slip; one end was near me; he brought one along side of me in the evening.

Q. About what time?

A. A little before dark, I think.

Q. Was anything said then?

A. Nothing. I did not say anything.

Q. Did he go away after that?
A. He did.
Q. What did he bring back next?
A. I do not know.
Q. Did he come back before he made up the tow?
A. He came back some time in the slip.
Q. After he left the boat along side of you and went off, did he come in and land any other boat and go off?
A. I think he landed one boat & went away again.
Q. Did he come and land any other boat there?
A. I don't recollect.
Q. Did you pay any particular attention to see whether he did or not?
A. No, sir.
Q. Where were you during that time?
A. I was on my boat all the time.
Q. And whenever the boat came in there you saw it?
47 A. Yes, sir.
Q. About one o'clock he came there and made up his tow?
A. Yes; he made up his tow about 1 o'clock.
Q. When did he commence making it up in the basin?
A. A little before he went out.
Q. About 12 o'clock?
A. Yes; about that time.
Q. Did you have any conversation or say anything to him before he left?
A. No, sir.
Q. Did he haul you along side of him, or did he run along side of you?
A. He backed in between me and another boat.
Q. Whose line was made fast from the forward part of your boat to the tug?
A. I do not know; my man attended forward, and I stayed astern.
Q. Do you know whose the bridle line was?
A. I do not.
Q. Do you know who owned the breast or towing line?
A. It was our line.
Q. Whose was the stern line?
A. It was ours.
Q. Whose line was the line fast to the boat astern of you from your boat?
A. The captain of the tug-boat put his own line there, I guess.
48 Q. Do you know?
A. I do not.
Q. Which boat did the captain make fast first?
A. Mine; he got along side.
Q. Which did he take next?
A. The one outside next to me.
Q. Was it the "Wide World" he took next to you?
A. No, sir.
Q. Was the General Hancock the one next outside of you?
A. I do not know the name; he took the one next outside to me next.
Q. Which one did he take next?
A. I do not know.
Q. You do not know whether it was the one along side or the [or the] stern boat?
A. No, I do not; I had mine made fast and did not mind.

Q. Did you have any conversation with the captain, or say anything to him, from that time until the line of the boat astern of you parted?

A. No, sir.

Q. You had no talk or conversation of any kind with the captain of the tug from the time you got fast to him until that line parted?

A. No sir.

49 Q. Were you on board your boat all the time to the breaking of the line?

A. Yes, sir; from the time he took me from Clarkson st., I never left the vessel until he cut the line.

Q. Did you know the boat was sinking?

A. Yes, sir; I told him she was sinking.

Q. This boat outside of you, was she found floating when you came out after making the harbor?

A. That boat was afloat; he brought her into the harbor.

Q. Where was she afloat?

A. In the bay.

Q. Had she anchored?

A. I do not know.

Q. Did you go out again with the tug?

A. No, sir; I stayed in.

Q. You did not go out with the tug when she picked the other two boats up?

A. No, sir.

Q. Did you see her pick them up?

A. No, sir; I saw her bring them in.

Q. Which was the harbor she made?

A. New Brighton, somewhere near the kills.

Q. Do you know what time the boat broke adrift?

A. About four o'clock in the morning.

Q. How long did it take the tug to go down and make the harbor and start out again?

50 A. I do not know; I left the tug when she got to the harbor, and stepped over to go on the steamboat "New Philadelphia." That was in the neighborhood of 5 o'clock.

Q. Did both of the lines of the boat astern break at once?

A. I do not know.

Q. They both did break, however?

A. Yes, sir; she got away from the tow.

Q. Was the tide ebb or flow?

A. I do not know.

Q. When was the first you spoke to the captain about your boat being in danger by backing?

A. As soon as he began to back.

Q. Could you see this boat astern of you at the time?

A. Yes, sir; she was only a little way from me; the tug wasbacking right into us.

Q. Were you afraid she would run into you?

A. I was afraid when he threw us in the trough of the sea that he would.

Q. Were you afraid you would be backed up against the boat astern and injured?

A. No, sir.

Q. Had you any fenders?

51 A. Yes, sir; upright fenders. The tug had fenders along side.

Q. You say the deck of your boat was about 3 feet above the water?
A. Yes, sir.
Q. Was she the same heighth all the way along?
A. She must have been that at midships; she was higher in the bow than the stern.
Q. Were her sides straight?
A. Yes; she was about one width until you got to the sheer of the bow from the stern.
Q. One width all the way to the stern from the centre?
A. Yes, sir.
Q. How low down was the deck of the tug, above or below you?
A. The tug was higher than I was; I cannot tell how much; that is, the bulwark of the tug.
Q. I mean her deck.
A. I can hardly tell; I did not examine.
Q. What did you find the shape of the break in the boat when she was raised.
A. The hole was about 6 or 8 inches, a little way from the stern on the starboard side, and then another hole right under that again; the holes were punched in, the peices of plank broke right in.
Q. Was one plank broken 6 inches, & another plank broken 6 inches?
52 A. I think so. I did not measure them. I saw the two holes.
Q. You told the captain if he backed that he would sink you?
A. Yes, sir.
Q. Where were you standing at that time?
A. Near the cabin of my boat.
Q. Was any one at your rudder?
A. No, sir.
Q. Where was your man?
A. He was on deck, too.
Q. Where?
A. About midships, round the bow.
Q. Did you undertake to pump your vessel at all?
A. Yes, sir.
Q. After the time you told him he would sink you if he backed?
A. We could hardly stand on deck to pump.
Q. Did you try to pump her at that time?
A. My man tried the pump.
Q. Did you or not attempt to pump her yourself after you told the captain he would sink you if he backed?
A. No; I did not.
Q. At that time was the surging up and down?
A. Yes, sir.
Q. Considerably?
53 A. Yes, sir; she was in a trough of the sea.
Q. Before the tug commenced backing, had the boat been surging up and down?
A. No, sir; she was surging a little.
Q. But just as soon as the tug commenced backing, she commenced surging heavy?
A. We got into a trough of the sea, and the tug commenced surging.
Q. How long?
A. I cannot tell how long.
Q. You do not know which way the tide was?
A. No, sir.

Q. Do you know which way the wind was blowing?
A. From Brooklyn.
Q. You do not know the points of the compass?
A. No, sir.
Q. You do not know whether it was blowing directly across the river, or angling up and down the river?
A. I do not know.
Q. Do you know what course the tug was on?
A. No, sir.
Q. Do you know what point of Staten Island she headed for as she went down?
A. No, sir.
Q. Which channel did you go through; which side of Governor's island?
A. I don't know which channel.
54 Q. Which side of Governor's island did you go, the East river or the other side?
A. We came out of Atlantic dock, and went right down this side of Governor's island, I think, to the east; it was so dark I do not know.
Q. After the tug commenced backing, do you know which way she headed?
A. She headed in for the kills.
Q. When backing, which way was she heading?
A. She was backing up.
Q. Was that the only change made in her heading, backing up?
A. I did not see any other change except backing, to get this boat.
Q. What was the weather?
A. The weather was blowing a little fresh when we left Atlantic dock; it was raining that night. I believe it stopped a little.
Q. Did it rain when you left the Atlantic dock?
A. I don't think it rained after we left; rained before.
Q. Was it cloudy?
A. Yes, sir.
Q. Was it cloudy when the accident happened?
A. Yes, sir.
Q. Had you your hatches down?
A. Yes, sir.
Q. Did you cut any of those lines yourself?
55 A. No, sir.
Q. You are sure of that?
A. Yes, sir.
Q. You are sure you did not cut what is called the towing or spring line?
A. No, sir; I did not cut any line.
Q. When you told the captain about backing and you heard this knock, did you jump on board the tug?
A. Yes, sir.
Q. Did you go back on board the boat?
A. I did not; I could not after getting on the tug. It was a hard thing to get off.
Q. From the time you told the captain about the effect of backing up to the time the tug went up to the harbor, did you say anything further to the captain?
A. Yes; I told him he was after sinking that boat.
Q. When did you tell him this?
A. When going into the harbor.

Q. Did you say anything else to him?
A. No, sir; I said nothing else to him.

Re-direct:

Q. How long did it take you before you got into the harbor at New Brighton?
A. In the neighborhood of ¾ of an hour.
Q. Did this forward line break before the tug commenced to back?
56 A. Not until he began to back. I do not think it broke until he commenced backing.
Q. Would your boat have been in any particular distress if the tug had not backed?
A. No, sir.
Q. Was the boat that first broke loose light or heavy?
A. She had a load in.
Q. In your judgment, did the wind blow any more heavily at the moment of the accident than it did when you left Atlantic dock?
A. I think not.
Q. Can you make out on that chart about where you were that night when the accident took place?
A. It was somewhere about the light-house.
Q. The offside or the inside?
A. I cannot say. It was somewheres about the light-house.
Q. Did you see the boat after it was sunk?
A. Yes, sir.
Q. I mean, can you tell where she was sunk?
A. No, I cannot.
Q. Were you there when she was raised?
A. No, sir; I was in Jersey City.
57 Q. Do you know anything about the captain of the Quickstep—what his previous pursuits had been?
A. No, sir; I never had seen the man before.

Re-cross:

Q. Do you know the tonnage of the Quickstep?
A. No, sir.

Edward Pendergast, called by the libellants, being duly sworn, testified, (direct examination by Mr. Scudder:)

Q. What is your business?
A. Most of the time steamboating.
Q. How long have you been steamboating?
A. About 4 or 5 years.
Q. How long navigating on the water?
A. I cannot tell—ever since I had petticoats on.
Q. Were you on board the Citizen the night she sank?
A. Yes, sir.
Q. Are you familiar with the making up of tows?
A. Yes, sir.
Q. How was that tow made up that night?
A. It was not made up.
58 Q. What was the difficulty in it?
A. The stern boats were not made up at all.
Q. In these towing matters, who has the duty of making up the tow?
(Objected to as not alleged in the libel; admitted; exception.)

A. The captain & pilot gave the orders.
Q. Who has the control of making up the tow?
A. The captain and pilot of the tug.
Q. What was the difficulty in making up that tug, if any?
A. In the first place, he did not make up the boats right; he made up the stern boat away behind, swinging on her line. She would take a sheer off that way and then this way, that strained her lines until she parted them. After she parted them the captain stopped and backed. As he backed her bow swung to the westward; the wind was blowing S. S. E. She got into a trough of the sea and commenced to roll, and the cleet would not hold the line. There were 6 or 7 turns of the line round the cleet. This was the line from the bow of our boat to the tug; it went round the cleet. The bow of the Citizen swung off, and
59 as she swung off I ran back aft, and as I did so I heard the clatter of the holes put into the boat. I heard the knock. Then I went up to the captain and said to go on, or he would lose the whole of his boats. Said I, "Captain, you may as well go on, and leave these boats that are adrift, or you will lose the whole of them." He did not go at that time. He tried to make fast the outside boat, and I helped him to make it fast; but the line gave way on the boat's cleet some way, and he had to go on with the other boats and leave these two boats in the bay. He landed us in the harbor; and after he landed us in the harbor he went out to get these boats and fetch them in.
Q. In your opinion, would that accident have happened if the hind boat had not broken loose and the tug had not backed up for her?
A. I do not understand you.
Q. If the line of the boat that was aft of you had not parted, and the tug-boat had gone ahead, what would have been the effect on the tow?
A. It would have saved our boat.
Q. What was said on your boat to the captain of the tug-boat?
A. We told him to go in and save the boats he had, and then come back for her.
60 Q. What would be the effect if he had gone ahead?
A. He would have saved the boat that was sunk.
Q. Did any accident happen to your boat until the tug began to back?
A. No, sir.
Q. What was the condition of the Citizen before she received this blow?
A. She was a good, sound boat, caulked from top to bottom—rebuilt.
Q. Did you see her after she was raised?
A. No, sir.
Q. How long did the Citizen remain afloat after this blow?
A. I should judge about ten minutes.
Q. Did you see her sink?
A. Yes, sir.
Q. When had you tried her pump before this accident?
A. 15 minutes before.
Q. Did you find any water in her?
A. Not a drop; the pumps sucked.
Q. Did the bridle line part before the tug commenced to back?
A. No, sir.
Q. The line that went from bow to bow?
A. No, sir.
Q. Which way was the wind at that time, and what was the
61 effect of backing on the part of the tug in causing these boats to open?

A. The wind, as near as I can judge, was S. S. E., coming right into the Narrows. The boats headed very near head on.

Q. Which quarter was the wind coming on?

A. On the port bow a little.

Q. What was the effect of backing on the tow?

A. The effect was that he swung his stern in and got into a trough of the sea and rolled, and made one boat go higher than another, and the cleet rendered; that made the boats to open. If he had gone ahead, he would have saved the boat.

Q. Do you know which was the proper channel to tow in, with the tide and wind as it was at that time?

A. There is no certain channel, but generally the tows go right along on the flats at such times. This was out in the Buttermilk channel—right out in the ship channel.

Q. Did you hear the bargain made between Captain Byrne and the captain of the Quickstep?

A. Yes, sir.

Q. State what you heard.

62 A. I heard the captain of the Quickstep ask for the captain of the Citizen. Captain Byrne came on board, and he and the captain of the Quickstep had a talk. Captain Byrne asked him if he was going to New Brunswick; he said, "Yes," and that he would tow him there for $35. Capt. Byrne said, "I will give you $32 50; I do not care whether I go with you or not." The captain of the Quickstep told us to get our lines out. We got them out expecting to go to New Brunswick at that time. I did not say anything. He went right into the Atlantic basin and left us there, and said he was going after more boats; so he backed out and came in again about dark.

Q. What was the condition of the weather that evening?

A. It was not so bad that evening.

Q. What was the condition of the weather when you left Clarkson street?

A. It was not bad then.

Q. How long does it take to go from there to New Brunswick?

A. Between 7 and 8 hours.

Cross-examined by Mr. Donohue:

Q. How long would it take ordinarily to go from the Atlantic dock to New Brunswick?

63 A. Between 7 and 8 hours on a regular tow; that is the time that regular steamboats do it in.

Q. When you went to Atlantic dock, where did he land you?

A. Along side of another canal—one of those that we went in tow with; it was a boat loaded with iron.

Q. Was it the boat outside of you afterwards?

A. Yes, sir; I do not know what her name was.

Q. Do you know who the master was?

A. I do not.

Q. Did you know him or see him before?

A. No, sir.

Q. Do you know whether he is in court or not?

A. I do not.

Q. You did not know the men on board of her?

A. No, sir.

Q. How old are you?

A. About 23 years of age.

Q. How long were you on the "Citizen?"
A. I was on her very nearly three months.
Q. Prior to that, what were you in?
A. The steamboat "Independence;" I was a deck-hand on her.
Q. Where did she run?
A. From New Brunswick to New York, towing coal barges all the time.
64 Q. How long were you on her?
A. A couple of months.
Q. How long was that before you was on the barge?
A. I left her one day, and went on the barge the next.
Q. What were you doing before you went on the "Independence?"
A. I was boating in a canal-boat on the canal.
Q. How long were you on her?
A. I cannot tell.
Q. Can you tell her name?
A. I cannot.
Q. Can you tell whether you were on her one month, six months, or a year?
A. I cannot.
Q. Can you tell what boat you were on before you were on that canal-boat?
A. I was on another canal-boat, the "Navigation," for two months, on the canal.
Q. How long ago is it since you were on the "Navigation?"
A. I think 3 or 4 years; somewhere between 3 and 4.
Q. How long were you on shore?
A. I can hardly tell.
Q. Do you know who the bridle line belonged to that has been spoken of?
A. Yes, sir; to Christopher Byrne; to our boat.
65 Q. It was your boat line?
A. Yes, sir.
Q. Did you assist in fastening it?
A. Yes, sir.
Q. You fastened it to your own boat?
A. Yes, sir.
Q. Who fastened it on the other boat?
A. Some of the tug's crew, I guess.
Q. Do you know who it was?
A. Yes, sir; I do.
Q. Who was it?
A. I think it was the pilot of the tug.
Q. Are you sure of that?
A. I will not say for sure.
Q. Your best recollection and judment is that it was?
A. Yes, sir.
Q. Who had charge of the tug's wheel when she was making up the tow?
A. I do not know; I think the captain had.
Q. Who fastened your bowline to the tug?
A. I think the pilot.
Q. The bridle line from the bow of your boat to the other canal-boat, which did it belong to?
A. I don't know.

Q. Was there a line from the bow of your barge to the bow of the barge or canal-boat on the starboard side of the tug?

66 A. No, sir; I think not.

Q. You are certain of it?

A. Pretty nearly certain; I am not quite certain.

Q. Your recollection is as distinct on that point as on any other?

A. No, sir.

Q. Did you have anything to do with the bridle line?

A. No, sir.

Q. Then the only lines that you know of being fast was the line on your starboard side, the bowline to the tug, the stern line to the tug, and the towing line?

A. Yes, sir.

Q. Leave out the bridle line, and does this Exhibit No. 1 show about the way these lines were fastened?

A. That is about the way they were fastened, but the boats were pretty well back.

Q. That shows about the way they were made?

A. Yes, sir.

Q. The bridle line you do not recollect anything about?

A. No, sir.

Q. You think the sterns of the canal-boats were further back?

67 A. I mean the boats were made fast in that way; I think the stern of the canal-boat came back a little further; I think the stern of the canal-boat and of the tug were pretty nearly square.

Q. From the time that you commenced making up the tow until it started, was anything said that you heard between [any said that you heard between] any one on your vessel and on the tug that you recollect?

A. No, sir.

Q. Was anything said between that parties up to the time this backing commenced?

A. No, sir.

Q. Then this bridle line that I speak of—and that you do not know anything about—you do not know whether that was there at any time?

A. No, sir.

Q. You cannot tell anything about the parting of that line?

A. No, sir; I know nothing about that.

Q. How far was it from the stern of your boat to the bow of the boat behind you?

A. I should judge it was as far from here to the other railing, (about 15 feet.)

Q. How far in your judgment ought she to have been tied behind?

68 A. She ought to have been tied right close up to the stern, so that her bow [would *in pencil*] nearly touch; not to chafe, about one foot off, and then have a breast line and towing line out.

Q. A breast line to which?

A. A breast line to one of the boats on our side, and a tow-line to one of the boats on the other side.

Q. Would it make any difference as to which boat the line was made fast?

A. The bowline on the inside boat and the breast line on the outside boat, the breast line to be fastened on the outside of the outside boat, and right on the outside of the inside boat next to the steamboat, right on her forward cleet or samson-post.

Q. The line that went from the bow of your boat to the tug, you fastened on your boat, and they fastened it on the tug?
A. Yes, sir.
Q. Was that the line you say rendered round the cleet?
A. Yes, sir.
Q. Where was the cleet?
A. The cleet was about 12 feet from the stern of our boat, right by the side of the boat.
Q. Who fastened what you call the towing line (and what I call the spring line) on your boat?
69 A. I think Captain Byrnes did.
Q. And the after line on your boat was fastened in the same way?
A. Yes, sir.
Q. Who fastened the lines from the outside boat on your side to your boat?
A. I fastened them on our side.
Q. The lines on your side connected with the outside boat you fastened?
A. Yes, sir.
Q. Who fastened the line on your boat that was attached to the boat astern.
A. The pilot of the boat was there about it. I think he came on our boat about it; I am not sure about it. I know I did not do it.
Q. Was it not on the same cleet or the same place your stern line was fastened that that line was fastened?
A. No, sir; it was the other side.
Q. You say the line from your boat to the one astern was on the port cleet of your boat?
A. Yes, sir.
Q. Are you certain of that?
A. Yes, sir.
Q. Were you there aft to see?
A. Yes, sir; I wanted the captain of the tug to stop to make the tow up right.
Q. Was there any other difficulty you found with the tow
70 excepting the way that boat was made fast to yours?
A. No; not that I know of.
Q. You say you heard this breaking as you were running aft?
A. Yes, sir; I was running aft.
Q. Where had you been standing before that?
A. Forward.
Q. And your captain?
A. My captain was aft.
Q. Where was the captain of the tug?
A I don't know whether he was on deck or in the pilot-house.
Q. You say you heard the captain say something; what was it?
A. I did not hear him say anything.
Q. What was the first you heard after you started from the Atlantic dock; or did you hear your captain say anything until after the boats got apart?
A. I did not hear him say anything until the boat was backing.
Q. Was your boat cut adrift?
A. She broke loose.
Q. Was your boat cut away from the steamboat?
A. The lines were cut.

Q. Who cut them?
A. I don't know whether the captain or the pilot, but it was either one.
71 Q. Did you see?
A. I saw him cast them off.
Q. From the time you left Atlantic dock until the lines were cast off, did you hear your captain say anything?
A. Not until the after boat broke loose.
Q. Did he say anything?
A. When the captain of the tug stopped to back he told him to go on or he would sink the boats; nothing more.
Q. Was that just when the tug commenced backing, or before or some time after?
A. It was two or three minutes after.
Q. Then she had been backing a little time?
A. Yes, sir.
Q. Were there any person on board the boat astern of you?
A. Yes, sir.
Q. Did your captain say anything else besides that?
A. Not that I recollect.
Q. Did you hear him say anything before that to the captain?
A. No, sir.
Q. Where were you?
A. Standing right along side of him.
Q. Was it the time you heard him say that that you started to run aft?
A. I was along side of him when he said it.
72 Q. Had you just run aft at the time he said it?
A. Yes, sir.
Q. You had just got to him at the time he said it?
A. Yes, sir.
Q. You had run from forward to him?
A. Yes, sir.
Q. Was either of your lines from your boat to the tug cut?
A. Yes, sir.
Q. Which one?
A. I cannot tell. I think the bowline.
Q. Did you see it cut?
A. Yes, sir.
Q. I think you said the line slipped off the cleet?
A. No; it rendered; that is, paying out; it rendered until it got tight.
Q. It run out until it got tight?
A. Yes, sir; it had either to render or part.
Q. You think the bowline was cut?
A. Yes, sir.
Q. Was it cut before or after you run aft?
A. I will not say that; both the bow and tow line were made fast on one cleet of the Quickstep.
Q. You say both the bowline & tow-line were on the same cleet of the steamboat?
A. Yes, sir; I cannot say which one was cut.
73 Q. You cannot tell by whom it was cut?
A. No, sir.
Q. What became of the other line?
A. It was cast off by some one on the tug.
Q. Did you see the line that was cut?
A. I saw the axe.

Q. What became of your aft line?
A. It was cast off; I don't know by whom.
Q. Did your boat sink before you went into the harbor with the tug?
A. Yes, sir.
Q. Who cast off the lines from the port side of your boat to the outside boat.
A. The captain of the outside boat cut them?
Q. Did the tug take the outside boat in tow before she went into harbor?
A. Yes, sir; she took a hawser to her, but it parted, and he had to let her go again.
Adjourned to 11 o'clock to-morrow.

74

75 United States district court, southern district of New York.—Before Hon. Judge Shipman.

CHRISTOPHER BYRNE *vs.* THE STEAM-TUG "QUICKSTEP." } Second day, Feb'y 15, 1867.

Index.

	Direct.	Cross.
Edward Pendergast (recalled)	51	
Ephraim Kempton	52,125	125
Justin F. Talmadge	52	53
Christopher Byrne (recalled)	54	
William Lowe	54	57
Hugh Gallager	59,127	61
Joseph P. Barnes	61	63
Joshua A Ludlum	67	79
John Hague	88	93
Thomas Lebengood	93	98
George W. Shadley	101	103
Charles Beardsley	105	106
William Smith	107	111
William Rodan	114	
Summers Warwick	117	119
Ephraim Kempton (recalled)	125	125
Hugh Galager (recalled)	127	

Warburton, Underhill & Bonynge, stenographers, 117 Nassau st., 39 Park row, N. Y.

76

77 Edward Pendergast, recalled by Mr. Scudder:

Q. Did you see Robbin's reef light-house the night of this accident?
A. Yes, sir.
Q. At the time of the collision had you got up to it, or passed it, or where did it bear with reference to you?
A. We were ahead of it.
Q. You had passed it on your way down?
A. Yes, sir.
Q. In passing it, was the light-house on you left or right hand?
A. It was on our right hand.

Q. Can you form any idea of about how far off it was?
A. I cannot.
Q. After the collision, which way did the Citizen drift?
A. She drifted back.
Q. Can you point out on this chart where the boat sunk, with reference to the light?
She got headed to the westward and drifted round the light here, (illustrating,) tug and all; I think that is about the place she sank. (Marked "C" on chart.)

78 Ephraim Kempton, called by the libellants, being duly affirmed, testified, (direct examination by Mr. Scudder:)
Q. Do you know the canal-boat Citizen?
A. Yes, sir.
Q. Have you ever done work on her?
A. Yes, sir.
Q. When?
A. We had overhauled her just before she was sunk.
Q. In what condition was she?
A. She was in good condition.

Justin F. Talmadge, a witness for libellant, being duly sworn, testified, (ex'd by Mr. Scudder:)
Q. Did you raise the canal-boat "Citizen?"
A. Yes, sir.
Q. Will you look on that chart, and tell us about where she was, if you can? (Presenting chart to witness.)
A. About one-eighth of a mile S. S. W. of Robin's reef light, as near as I can judge.
Q. After she was raised, in what condition was she as to any holes in her?
A. Well, there was one hole broke in between her timbers along some twenty feet forward of her stern, the plank was mashed in be-
79 tween her timbers?
Q. (By the court.) Any more holes in her?
A. Yes, sir; there was a good many more holes in her.
Q. (By the court.) Where?
A. Well, nearly all over her.
Q. (By the court.) I mean broken in.
A. No more broken in.
Q. (By the libellant.) Where did they come from?
A. I suppose they came from the swelling of the grain.

Cross-examined by Mr. Haskett:
Q. Were there hatches found on board her?
A. No hatches on board of her.
Q. What did this hole look like?
A. Looked as if it had been broken in by the pressure of a fender squeezing up against her, or she squeesing against it.
Q. It was no wound like that of an axe or any such instrument?
A. No, sir; no scratch; it was forced right in.

Christopher Byrne recalled, (ex'd by Mr. Scudder:)
Q. Did you see Robin's reef that night?
A. Yes, sir.
Q. How did it bear from you?
A. It was on the night.

Q. You went on the outside of it?
A. Yes, sir.
80 Q. Had you passed it at the time of this collision?
A. Just passing it.
Q. About how far distant was it?
A. Not far; right below the light.

William Lowe, a witness for libellant, being duly sworn, testified, (ex'd by Mr. Scudder:)

Q. What is your business?
A. Boating.
Q. How long have you been boating?
A. Well, altogether, I suppose, about somewhere in the neighborhood of 16 or 18 years.
Q. What are you doing now?
A. I am steamboating at present.
Q. What boat are you on?
A. The New Philadelphia.
Q. In what capacity?
A. Master.
Q. In what business?
A. Towing.
Q. Between what places?
A. New Brunswick and New York.
Q. How long have you towed between New Brunswick and New York?
A. Well, off and on, for about ten years.
Q. Are you familiar with the channel way?
A. Yes, sir.
81 Q. Do you recollect the night this accident took place?
A. I do, sir.
Q. Do you consider it to have been good seamanship that night to have gone outside of Robbin's reef light?
A. I did not go; I was on the way to New York.
Q. Mark on that chart where you would have gone that night if you had gone.
A. If I had been coming down that bay that night I should have come inside Robbin's reef for safety.
Q. Is there a channel way in there safe?
A. A kind of sluice way.
Q. Is it known to persons generally who are pilots?
A. Yes, sir; a man who is acquainted is supposed to know that place, I believe.
Q. Do you go through it often?
A. Yes, sir.
Q. How large a boat is yours?
A. About 200 feet long.
Q. How large as compared with the Quickstep?
A. I don't know exactly the Quickstep's length; I suppose she was more than as long again.
Q. How with reference to her power?
A. The power of the Quickstep I know nothing about; in fact,
82 I know nothing about horse power at all; I am not an engineer; I don't know as I know the number of horse-power on my own boat.
Q. How many boats did you tow with the Philadelphia?
A. 10 to 12; three lengths, two or three abreast.

Q. What is the object of going inside Robin's reef light?

A. The object is, one thing we save time; and if the wind is to the southward and eastward, there is not as much sea as in going down round the reef.

Q. The water is deeper on the outside, is it not?

A. At the left of the light?

Q. Yes.

A. Yes; that is the regular ship channel.

Q. And with the wind southward & eastward by going inside you get alee?

A. We get less swell on account of it being shoaler water.

Cross-examined by Mr. Donohue:

Q. What does your boat draw?

A. Seven feet about.

Q. What was the boat you were [on then *in pencil*] drawing?

A. That is the one I meant.

Q. How much does the one you are on now draw?

A. She draws about six.

83 Q. What other boats have you been on besides this?

A. I have been on several; the Keystone, Thistle, Washington.

Q. Did they draw any more water than those boats you have spoken of?

A. No; I don't know that they do; somewhere about the same draft.

Q. Do you know how much water there is there on the flats?

A. I never found less than eight feet yet.

Q. You think it is about that?

A. I never found less.

Q. Is that in the sluice way you speak of?

A. Yes, sir.

Q. How wide is the sluice way?

A. Well, I should suppose it was about the very best of the water through there; about three or four hundred yards.

Q. That is 1,200 feet wide?

A. That is taking the whole sluice way round.

Q. That is the width of it; the channel way?

A. I would not want to go into just the number of feet, but I think we had about that room.

Q. How near do you go to Robbin's reef going through the sluice way?

A. Within 2 or 300 yards of the light-house.

Q. Where do you turn inside of Robbin's reef light?

A. Just above it; that is, going from New York.

84 Q. About how far above it?

A. I should suppose about 500 yards above it.

Q. You sheer to the westward through this sluice way?

A. Yes, sir.

Q. You were not out that night, were you; the night of this accident?

A. No, sir.

Hugh Gallagher, a witness for libellant, being duly sworn, testified, (ex'd by Mr. Scudder:)

Q. Were you in the tow the night of this accident?

A. Yes, sir.

Q. Was yours the boat that broke loose?

A. Yes, sir; the first boat.

Q. After she broke loose, did you anchor her?

A. Yes, sir.
Q. How long did you remain there?
A. Until after daylight next morning. I guess it must have been about 7 o'clock; I don't recollect exactly what time.
Q. Did you find any difficulty after you anchored her; any difficulty about the sea, or anything of that kind?
A. No, sir; not after we got out of the trough of the sea.
85 Q. While you were in the trough of the sea, how was it?
A. The sea broke over the side while we were in it.
Q. When you were anchored, she swung head to the sea?
A. Yes, sir.
Q. And then you had no difficulty?
A. No, sir.
Q. Were you asleep when she broke loose?
A. I was from the time we started out of the basin till we got to Governor's island, and the blowing there, the wind blowing very hard and it being rough, woke me up, and I came out, and my boat was sheering backwards and forward.
Q. Slewing?
A. One way and the other; after that I went to bed again; and it was the pitching in the trough of the sea that woke me up the second time.

Cross-examined by Mr. Donohue:

Q. She was adrift from the other boats when you woke up the second time?
A. Yes, sir.
Q. After getting up, as you spoke of passing Governor's island, you went to sleep again?
A. Yes, sir.

86 Joseph P. Barnes, a witness for libellant, being duly sworn, testified, (ex'd by Mr. Scudder:)

Q. What is your occupation?
A. Steamboat man, sir.
Q. How long have you been steamboating?
A. Thirty years and over.
Q. Where?
A. Between New Brunswick and New York.
Q. Have you had command of boats as pilot or captain during that time?
A. Yes, sir.
Q. Do you know the ways of towing between here and New Brunswick?
A. Yes, sir.
Q. Do you consider it a proper course on a night such as has been described here to have gone outside of Robbin's reef with that tow?
A. My judgment has been, going inside the reef.
Q. Why would you have gone inside?
A. The reef would break the reef off.
Q. Have you towed most of the time between here and New Brunswick during this thirty years?
A. Towed for the Camden & Amboy Comp'y twenty-six years.
Q. Is there any difficulty in going inside through this inner channel?
A. No, sir.
Q. (By the claimants.) You mean the sluice?

87 A. No, sir; I mean the inside channel—inside the light-house—inside Robbin's reef.

Q. (By the libellants.) How much water have you found to be the least there?

A. We carried two fathoms—two and three quarters.

Q. At low water, how much is there there?

A. There is nothing less than 9 feet, and that has got to be a very low tide, wind southward & westward; with the wind southward & eastward, the water does not run out.

Cross-examined by Mr. Donohue:

Q. What boat are you on?

A. None now, sir.

Q. What boat were you on last?

A. On the Jane Campbell.

Q. What is she?

A. A propeller.

Q. How large?

A. Carried about 120 tons, I think.

Q. What was her business?

A. Carrying freight to New Brunswick.

Q. What before her?

A. The R. L. Maybee.

Q. What was her business?

A. Towing.

Q. How long were you on the "Jane Campbell?"

A. A couple of months.

Q. How long were you on the "Maybee?"

88 A. I was there three months, I think, till the business got a kind of dull.

Q. Where was she towing; round the harbor & to sea?

A. No, sir; I towed to New Brunswick with her.

Q. Who owned her?

A. Mr. Crary.

Q. You were towing to New Brunswick with her two months?

A. Yes, sir; more.

Q. What time.

A. June and July, I think—along there.

Q. How much water did she draw?

A. Draws 4½ feet.

Q. What boat were you on before her?

A. I had been in a great many.

Q. The next one before her?

A. The "Independence."

Q. What does she draw?

A. Six feet, or six and a half.

Q. She was in this towing business?

A. Yes, sir; then the Swan.

Q. How much did she draw?

A. 5½. The Thistle.

Q. How much did she draw?

A. 4½.

Q. How long is it since you were on the "Thistle?"

A. Well, it was some years ago.

Q. About how long?

A. I will make a guess; I can't tell exactly, but I think it is twenty

89 years, or pretty close upon it; she was the second boat that came out in the towing business in the Raritan canal.

Q. What proportion of times do you go inside and what outside of Robbin's reef light—what proportion out of ten trips?

A. Three-fourths inside to one outside.

Q. For what other reason besides the weather do you go inside?

A. It is a short cut across there, and you get clear of the kills.

Q. You also go in there to get rid of the tide?

A. Yes, sir.

Q. On a flood tide does it run east or west on the kills?

A. Runs west.

Q. You would not want to get rid of a flood tide, therefore, going into the kills?

A. We would want to get it as soon as we could.

Q. What other reason besides the tide, short cut, and the weather takes you in there?

A. On the ebb tide, wind southward and eastward, two tides meet below Robbin's reef and it makes a great roll there.

Q. That is on the ebb tide?

90 A. Yes, sir; to avoid that, we cut across the reef to get clear of the swell.

Q. How near does that channel run to the light-house—this inside one?

A. The light-house stands on the S. S. E. side of the reef.

Q. How near does the channel run to it?

A. I can't tell exactly; I think in the neighborhood of 300 or 400 yards.

Q. Is that the nearest point of the channel to the light-house?

A. That is the nearest point, unless we go around.

Q. That is the nearest point to the west of the channel to the light-house?

A. Yes, sir; if you keep upon the flats, the shoaler the water you have; the nearer the reef you go the better the water.

Q. 300 or 400 yards is the nearest?

A. 200 or 300.

Q. How wide is the channel?

A. Two, three, or four hundred yards, according to the tide; it is all owing to how the tide runs out. There is a flat all through there, and rocks; but then there is navigable water at all times of the tide through it.

Libellant rests.

91 Joshua S. Ludlum, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Were you master of the Quickstep at the time of this event?

A. Yes, sir.

Q. Just state what conversation took place between you and Captain Byrne, the libellant in this case, at Clarkson street, in relation to the towing of his vessel down to New Brunswick.

A. Well, I took my boat to Clarkson street—the tug boat "Quickstep"—and I went round to see if I could get any tow there, and I came to the Citizen, and the captain waived to me, and I went to him. I asked him if he was going to Brunswick, and he said, Yes, sir; he was going to Brunswick. I asked him, then, if he was ready to go; and he wanted to know what the price would be. I told him our towing was $75 to New Brunswick; and he said he thought it was too much; he said he would give me thirty; I said "No, I can't take you for that;

$35 is our towing." We stood round a little while, and finally he said he would give me $32 50. Well, I thought of the matter, and after a while I told him, "Captain, I will take you to Atlantic basin for $32 50—
92 I will take you round to Atlantic basin when I make up my tow for to go to New Brunswick;" and he gave me his lines; we started and took her round to Atlantic basin.

Q. Just state what the condition of the weather was at the time you started from Clarkson street and arrived at the mouth of the river.

A. The wind then was blowing S. E.

Q. How much of a wind?

A. Blowing very hard.

Q. Would it at that time have been safe to have started down to New Brunswick with her?

A. No, sir; it would not have been safe to take her down in that condition; in fact, it would not be safe to take any loaded boat down that afternoon.

Q. Give us a description of the vessel—the depth of the vessel at that time, with her cargo on board.

A. I could not tell you exactly how deep she was.

Q. How much above the water was the portion of her hull that was perceptible?

A. Well, I should judge, amidships she was about two feet out of water, and forward not over a foot and a half. I made the
93 remark, too, to Captain Byrne, in the meantime, that the boat was very deep.

Q. Then she was not upon an even keel?

A. Not by any means; her stern was sticking up and her head down.

Q. Then she was what they call "by the head?"

A. Yes, sir.

Q. How many feet?

A. I could not exactly say, but I should suppose a foot and a half by the head by the looks of the boat.

Q. Then you took her round to Atlantic dock?

A. Yes, sir.

Q. Then what did you proceed to do?

A. Took her and put her along side of the General Hancock and other boats we were going to tow to New Brunswick.

Q. He made no representation to you at all after you took him to Atlantic dock?

A. No, sir; I did not hear anything said by the captain.

Q. When you made up your tow you started?

A. Yes, sir; when we got our tow made up we started in the morning.

Q. About one o'clock?

A. About three o'clock.

Q. What was the condition of the weather at the time of your starting?

A. Well, I had been watching the weather off and on all the
94 time, for I am very particular about that with a tow, and never go out when it is very blustery.

Q. What was it at this time in your judgment?

A. Very moderate, indeed.

Q. What was the condition of the weather for this voyage?

A. Perfectly safe.

Q. What was the condition of the weather at this time?

A. The weather was mild and safe to take the tow across the bay at that time.

Q. Are you accustomed to make up tows?

A. Yes, sir.

Q. What was the condition of that tow in relation to the balancing of the whole tow, making it up in a proper manner?

A. In making up the tow we most generally——

Q. What was the condition of this tow? Was it made up according to your system of making up?

A. Yes, sir; as I always made up my tows along side of a propeller.

Q. Well, you started on your voyage; state what took place immediately after.

A. At three o'clock, when we started out of Atlantic basin, the
95 weather was very mild—no wind; and after we got out into the bay I says to my pilot, "Where is the wind," and he said, "What little wind there is is about east;" but there was scarcely any to perceive at all. We proceeded on, and after we got one-third of the way down the bay, about three miles, the wind brightened up to about S. S. E. pretty sharp, and we kept going on, and the wind kept increasing all the time.

Q. State what you did.

A. We proceeded down the bay with the wind still increasing all the time; then we had got one-third down, and kept going on till we had got down, I should think, two-thirds of the way down the bay; it kept increasing all the time on us, and finally blew a gale of wind from the S. S. E. We kept on going down; our best plan was to get into the windward as soon as we could, going down with the ebb tide, and we proceeded down till we got to the buoy off Robin's reef that we had to pass.

Q. How much water do you draw?

A. We draw in the neighborhood of 8 feet—between 7 and 8.

Q. With that sea when you came within 600 or 700 yards of Robbin's reef, could you have safely gone inside that sluice?

96 A. No, sir, I would not have considered it safe with the tow or the boat; I knew the channel perfectly well, because it is not safe with our class of boats, for they draw more than the side-wheel boats do, and I never attempted it.

Q. Would the condition of the seas at that time have prevented you going in with any degree of safety?

A. Yes, sir; because if we had gone inside this channel we would have had our boats in the trough of the sea all the way, and to keep straight down we kept our boats head to the wind, for it was safe for the boats, and then we had a shorter distance to get them in to windward.

Q. Just state where this calamity took place—this sinking.

A. Well, it was right inside of Robbin's reef—about, I should judge—well, the light bore about an east course from us.

Q. Where did they break loose?

A. Brook loose inside of the kills, after we got inside of the reef.

Q. Just state the manner of their breaking loose and what you did?

A. After they broke this cross line that went from stem to stem?

97 Q. State what first happened.

A. The first thing that happened to us was a boat broke loose adrift from us; one of our stern boats broke adrift from our tow. I did not know it just at the time, not till afterwards; and in the meantime this cross line—this bridle line, that we call it—that went from stem to stem, from the Wide World to the Citizen, parted, and as soon as ever they parted it the boats along side of the propeller sheered off each way.

Q. Spread?

A. Spread out, and I immediately stopped our boat and went to back-

ing to draw our boats' heads together, and requested for some one on board to send a line across after parting this; but no one gave me any answer.

Q. You called out to the Citizen?

A. Yes, sir; I paid particular attention to the Citizen, because she was the deepest loaded. I felt more interest in her than any boat in the tow for that reason. I called out to the men on board, but no person gave me any answer. I did not see a man on deck. I halloaed out, "For gracious sake, if there is any person on that boat, to send a line across, I wish they would do it;" still I got no answer.

98 Q. What was the cause of the breaking of that line?

A. The roll, the surge of the boats in the trough of the sea, was the cause of the breaking the bridle line.

Q. What was the condition of the sea at that time?

A. It was very heavy; a very heavy roll jumping the boats about.

Q. What was the effect of that sea on the bows of the "Citizen?"

A. The sea was washing right over her bows.

Q. Now go on and state what you did.

A. I kept on backing—that was my best way—so as to keep their bows together so some person would take a line across, but I could not get any person to take a line across, and we backed some five or eight minutes, and finally the boat sunk—went right down head foremost.

Q. Did anybody tell you that she was being crushed or broken, or anything of that kind?

A. No, sir; I did not hear anything at all said to me. I was in the pilot-house all the time.

Q. Where was Byrne and his man at the time the line broke?

A. I could not tell, for I did not see him.

99 Q. By whom was that line found?

A. I could not say.

Q. It was not the line of the tug?

A. No, sir; it was not our line; some of the boats, I would not say which; I don't know.

Q. Did you cut any of these lines with an axe?

A. I did not, sir,

Q. What was the effect of that backing? Was that to bring the boats together?

A. That was for the purpose of bringing the bows together and holding them there till we got our bridle line across, and then we could have gone on about our business.

Q. After that bridle line was broken, was it safe to go ahead?

A. No, sir; it was not.

Q. Was not the bridle line broken before you undertook to back?

A. Yes, sir; because as soon as the bridle line broke the boats went right off from the propeller.

Q. You did not undertake to back before the boats diverged?

A. No, sir; that was my purpose in backing, to get the boats' heads together.

Q. Could your backing, if the line had been taut, have broke it by any means whatever? Captain Byrne says it was your backing that broke your [that *written in pencil over the word* your] line.

100 A. No, sir; that would have slackened his line more, and of course if there was a slack on it it could not part.

Q. Did you see the bow of that boat, the "Citizen?"

A. Yes, sir.

Q. Did you see whether she had any hatches on?

A. No, sir; I could not say anything about her hatches. I don't particularly notice the boats; that is, all the boats—I tow so many.

Q. Just state how this corn was piled on her deck.

A. The corn was on her after hatch, and I could not say whether it was on her midships or forward hatch, but I think it was on the forward hatch; that is, two or three of her forward hatches.

Q. (Court.) Piled right up?

A. Yes, sir; in bags.

Cross-examined by Mr. Scudder:

Q. How old are you?

A. 35 years old.

Q. When did you take command of the "Quickstep?"

A. 1864.

Q. This accident occurred in 1865?

A. Yes, sir; in 1865.

Q. How long had you been in command of the "Quickstep" before the accident happened?

101 A. Well, near a year.

Q. What month in the year 1864 did you take command of her?

A. Well, it was, I guess, about September or October; it was October—no, September.

Q. This accident occurred in October, 1865?

A. Yes, sir.

Q. What had you been doing with her during that period?

A. Been towing off and on between New York and New Brunswick.

Q. Towing all the time?

A. Yes, sir; pretty much all the time.

Q. How long does it take you to make a voyage down there with the Quickstep?

A. From New York to New Brunswick generally about sixteen hours.

Q. Did you ever go through this inside passage with her?

A. Yes, sir.

Q. How often?

A. Very often; always go through it when we come from the Brunswick way, because the tide is up and we think it is safe to go through it.

Q. Is the tide always up when you come this way?

A. Yes, sir.

102 Q. You go with the tide?

A. Yes, sir.

Q. What boat had you been in before you took the "Quickstep?"

A. I had been on schooners; never on a steamboat.

Q. This was the first time you ever had been in command of a steamboat?

A. Yes, sir.

Q. Had you ever been on a steamboat in any capacity before?

A. No, sir.

Q. Never on anything but sailing vessels?

A. Nothing but sailing vessels.

Q. How long did you remain in command of the "Quickstep?"

A. Well, I have had charge of her ever since, off and on.

Q. Where is she now?

A. She lies at New Brunswick?

Q. How many accidents did she meet with while you were in command?

(Objected to; libellant's counsel proposes to show that the witness was incompetent; excluded.)

Q. Have you remained in command of the "Quickstep" constantly since that time?

A. Yes, sir; pretty much so.

Q. How many boats did you generally tow with her?

A. Well, we towed down from four to six loaded boats.

103 Q. How many did you bring back?

A. We generally took back from seven to eight; if we can get eight boats we will fetch eight boats back always.

Q. (Court.) Light boats?

A. Loaded and light, generally; I never recollect of but once when we took seven loaded and one light one.

Q. You never went through this inner channel going to New Brunswick?

A. No, sir; I never do it, because when we go down with a tug it is the last of the ebb tide, and the tide is very low, and we can make better time going down outside, because the propeller will suck the mud and we have no water to spare.

Q. Who made up that tow that night?

A. It was made up under my direction.

Q. Who did the work?

A. I did some, and my man did part; he and the boatmen together.

Q. Who was your man?

A. A man I had going with me.

Q. What was his position on board?

A. Deck-hand.

Q. Did you have a pilot with you that night?

A. No, sir; I had not.

Q. Are you a licensed pilot?

A. I acted as licensed pilot.

104 Q. Are you a licensed pilot?

A. No, sir; I am licensed master of the steamer "Quickstep."

Q. Are you a licensed pilot?

A. No, sir.

Q. Were you then?

A. No, sir.

Q. Have you ever been a licensed pilot on a steamboat?

A. No, sir.

Q. You mean by saying "no" that you have never taken any degree of pilot?

A. No, sir.

Q. You know there are three separate branches?

A. Yes, sir.

Q. How many men did you have on board your boat that night?

A. Five men.

Q. In what capacity?

A. We had a deck-hand, and an engineer, fireman, cook, and myself.

Q. That deck-hand is the man who was in at the wheel with you?

A. No, sir; he had nothing to do with the wheel; I was at the wheel myself.

Q. Nobody else at the wheel but yourself?

A. No, sir.

Q. And you were there alone?

A. Yes, sir.

Q. How dark was it that night when the accident occurred?

A. Well, it was a pretty dark night.

105 Q. How far could you see?
A. We could not see farther than about the bows of the boat.
Q. What light did you have on your boat?
A. We had four lights on her.
Q. Where?
A. Red and green, and two white lights.
Q. Where were the two white lights?
A. One was forward and one aft, one on our stern and one on our flag-staff aft.
Q. How long after this boat broke loose that was behind you did you discover it?
A. Well, it was perhaps twenty minutes, perhaps not as long as that; I could not tell exactly the length of time.
Q. Who told you?
A. Why, my man came and told me that one of the boats had broken loose from the tow.
Q. Did you look to see which one it was, or anything about it?
A. He told me which one it was.
Q. Did you look?
A. No, sir.
Q. So you don't know where she was at that time?
A. No, sir; because I was paying all attention to the boat along side of me.
106 Q. You meant to let her go.
A. Yes, sir; because I wanted to get my boats in. After she broke adrift, it was my intention to let her go adrift and get my boats into the harbor, and then go back after her.
Q. It was not your intention to go back after them?
A. No, sir.
Q. You say that the bridle line broke before your man told you the boat was adrift?
A. Yes, sir; this bridle line broke in the meantime, just before he came to me.
Q. So that at the time the bridle line broke you knew nothing about the boat being adrift?
A. No, sir.
Q. Did you furnish any of the lines?
A. No, sir; I did not furnish any at all that I know of.
Q. You did not hear Capt. Byrne say anything to you at all that night?
A. No, sir; I did not.
Q. Did he come on board your boat?
A. I don't know where he was—anything about it.
Q. Where did this canal-boat sink?
A. She sunk to the westward of Robbin's reef.
107 Q. (Claimants.) Southward and westward?
A. Yes, sir.
Q. (Libellants.) Was she along side of you at the time—the Citizen?
A. Yes, sir.
Q. How far off from your boat?
A. Well, when she sunk she was right up close along side of our boat, because we were backing to draw their heads together.
Q. Had you got much stern way on at the time she sunk?
A. I could not tell how much she had on; she must have begun to get some little stern way on her.
Q. How long had you been backing?

A. From seven to eight lengths, I suppose.
Q. The wind was how?
A. It was what we call on the beam, right on the side of the boat.
Q. On your port or starboard beam?
A. On our port.
Q. Was it blowing any harder than when the bridle line broke?
A. No; about the same.
Q. At the time that she commenced to sink, was she fast to you?
A. Yes, sir; she was.
Q. Where the lines cut to let her go down?
A. I cannot say anything about her lines.
Q. You don't know?
A. No, sir.

108 Q. Had you sheered off toward the westward in backing?
A. The southward and westward.
Q. When the "Citizen" sunk was she about parellel with you?
A. Yes; when she sunk she was right up along side the whole tow.
Q. How did she go down?
A. Went down bow foremost.
Q. Did you hear any blow at all in backing?
A. No, sir.
Q. How far is your pilot-house from the stern of your boat?
A. I should think about from forty to fifty.
Q. Did you see Captain Byrne that trip at all after?
A. I don't know that I knew him among the men, for I had never seen him before in my life.
Q. You have stated in your direct examination that you told Captain Byrne you would charge him $32 50 to take him to Atlantic basin: what you meant was to take him there, and from there to New Brunswick?
A. Yes, sir; I took her to Atlantic basin to make up my tow.

109 John Hague, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. You were master of the canal-boat "Wide World," on the starboard side of this tug, at the time of this collision, were you not?
A. Yes, sir.
Q. Just state at what time you went into that tow?
A. I cannot tell you, sir. I was not on board the time the tow was making up.
Q. You saw the tow made up before you started?
A. Yes, sir.
Q. What is the condition of that tow—properly or improperly made up? (Objected to.)
Q. Was that tow made up in the usual manner?
A. Yes, sir.
Q. What was your opinion as to its propriety or impropriety?
A. I thought it was made up as it ought to be.
Q. How long have you been engaged in this boat business?
A. 41 years.
Q. And how many years towing on this route?
A. 16 years.

110 Q. Just state what the condition of the weather was at the time you left the Atlantic dock on your voyage that night.
A. Well, it was a little hazy.
Q. The "Wide World" was your boat?
A. Yes, sir.

Q. You were the first boat on the starboard side of the head tier of the tow?

A. Yes, sir.

Q. What was the condition of the weather when you got down near Robbin's reef?

A. As we proceeded down the bay the wind seemed to draw toward the southard, and it came on to rain.

Q. And when you got down to near Robbin's reef, what took place?

A. The breeze was freshening up.

Q. To what degree?

A. A pretty strong breeze.

Q. What effect had the sea upon your several boats?

A. At that time there was not much sea, but after we got below the reef light the sea commenced to roll; that is, to the westward of the light.

Q. What did the waves do with your vessel?

111 A. Well, they washed right into her bows.

Q. Do you know the Citizen?

A. I have seen the boat. That is all I can say.

Q. How long have you known her?

A. I have no memory what time I did see her.

Q. Did you see her that night?

A. I passed across her from the dock.

Q. What was her condition?

A. She seemed to be low.

Q. Did you observe whether she was on an even keel, or was she by the head?

A. I could not say.

Q. Who fixed that bridle line, and to whom did it belong?

A. I cannot say who fixed it. The line belonged to me.

Q. Did you fix your end of the line?

A. No; I did not. I was not on board when it was made fast.

Q. By whom are the lines in these tows found?

A. Well, the boats furnish the lines.

Q. Where were you at the time that bridle line was broken?

A. Standing on my cabin deck, aft the boat.

Q. Where did it part?

A. Close to our bitts.

Q. How large a line was it?

A. A three-and-a-half-inch line.

112 Q. Was it new or old?

A. Half new.

Q. Was it a good line for that purpose?

A. Yes, sir.

Q. Good and sufficient for that purpose?

A. Yes, sir.

Q. To what do you attribute its breaking?

A. The sea—the jumping of the boats in the sea.

Q. How far to the westward of the lights were you when it was broken?

A. I could not say to a certainty how far.

Q. What was the effect of that sea upon your boat?

A. The sea would fly right on the deck.

Q. What effect on your cargo?

A. We were in danger of losing it by rolling. My cargo was sugar on deck—hogsheads.

Q. What was the effect of this action of the "Citizen?"

A. I could not say; it was too dark from where I was.

Q. Did you see when you passed over her whether her hatches were on or not?

A. I could not say. I paid no attention.

Cross-examined by Mr. Scudder:

Q. You have towed abaft of other boats?

A. Yes, sir.

113 Q. Do you consider a tow well made when your boat yaws first one way and then the other?

A. You can't keep them still.

Q. When she yaws first one way and then the other, do you consider that proper fastening?

A. If the line is sufficient to hold her.

Thomas Lebengood, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. You were master of the General Hancock?

A. Yes, sir.

Q. The boat on the port side of the tug?

A. Yes, sir.

Q. When did you go into that tow—at Atlantic dock?

A. Yes, sir.

Q. What was the condition of the weather at the time you started on the morning of the 19th on this voyage to New Brunswick?

A. Well, the condition of the weather was, it was a kind of misty.

Q. I am speaking about the wind.

A. Well, the wind was moderate; I thought fit for any tow to go out.

114 Q. What was the condition of the wind when you got down near Robbin's reef?

A. When we got down that far it was a gale—a gale of wind.

Q. Did it rise quickly?

A. Yes, sir; very quickly.

Q. Just state what you know about this breaking of the bridle line, and the effect of that upon these boats.

A. Well, when I first noticed the breaking of the bridle-line, I was in the act of taking one of my children across on the steamboat; when I saw this storm was so violent I thought they would be safer there than on my boat; just as I jumped across with one of my boys, that line gave way; then some one halloaed from the tug that I should get a line out of the cabin of the "Citizen;" his line was in the cabin; that I should get that line out and run forward and fasten it, and give him one end on the tug; and so I did. I put my boy in the binnacle of the Citizen, and took the line and ran forward and fastened it. I don't know how; I was excited.

Q. Where were the men of the Citizen; any on board of her?

A. Not that I saw at that time.

115 Q. What was that line you took out of the cabin?

A. Well, as far as I know, it was a good, heavy line.

Q. Then what did you do?

A. After I fastened the line to the bow and in coming back toward the stern, she commenced sinking, and when she commenced sinking, they halloaed that I should cut the lines on the Citizen to keep her from pulling me down. I jumped across, and at that time my wife halloaed, "Where is the boy?" I had left him on the Citizen; I went back for

him; then I got back on my own boat and cut the line, and she went down head foremost.

Q. Did the seas wash over your boat?

A. Yes, sir.

Q. Did you see anything of the hatches of the "Citizen?"

A. No, sir; I did not take notice.

Q. Did you observe the boat "Citizen," whether she was deep or not in the water?

A. Well, she was loaded; I thought a full load.

Q. What was her condition upon her keel? Even keel, or how?

A. That I cannot say.

116 Q. When did that steamboat begin to back?

A. The steamboat began to back after the bridle line broke.

Q. But not before?

A. Not before, I don't think.

Q. Could the backing of that boat have broken that bridle line?

A. No; I don't think it could. I think it had more tendency to slack it by backing.

Q. What was the condition of that tow, whether properly or improperly made up?

A. The tow was made up according to all tows that I have ever seen made up by a tug.

Q. How long have you been in the business of being towed?

A. Well, about 2 years and a half.

Q. Is it the custom in the New Brunswick trade when a tow is to be made up to deposit the boats in one place, and then to come there and take the tow and go on?

A. Yes, sir.

Q. When you make a contract to tow from New York or Brooklyn to New Brunswick, you expect it is to be towed to some particular place to make up the tow?

A. Yes, sir.

117 Q. Was that an unusual storm; a heavy storm?

A. Yes, sir.

Cross-examined by Mr. Scudder:

Q. How much water did your canal-boat draw when loaded?

A. She drew at that time about 6 feet.

Q. How much was her sides out of water?

A. I could not say just exactly; she was amidships about two feet; at the bow she was at least 3 feet.

Q. Was she about the same-sized boat as the Citizen?

A. That is about the same size class of boats; mine is a new boat.

Q. About the same size?

A. About the same size, I guess.

Q. What were you loaded with?

A. I was loaded with iron ore and iron.

Q. You were cut adrift from the sinking vessel?

A. Yes, sir.

Q. And she went down?

A. Yes, sir.

Q. How long was it between the time that the steam-tug commenced backing and the canal-boat went down?

A. Well, I couldn't say exactly; not a very long time.

Q. 10, 15, or 20 minutes?

A. I could not say.

Q. Can't you give us some near guess?
A. Well, it might be 10 or 15 minutes, or not so much.
Q. Did your boat take any water in that night?
A. Well, she did not take in a great deal of water.
Q. What did you do after you went adrift?
A. I let her drift; that is all I could do.
Q. Where did you drift to?
A. I drifted on to the flats towards Jersey.
Q. Did you go aground?
A. No, sir.
Q. How did you stop going aground?
A. Drifted on till the tug came after us.
Q. Did you anchor?
A. No.
Q. She just drifted around like a log?
A. Yes, sir.
Q. Did the sea break over you?
A. Not after she got into the flats.
Q. Before?
A. Yes.
Q. Was it regular sea?
A. Yes, sir; regular sea going over her.
Q. Where did it go?
A. Over the boat.
Q. Most of that time she was in the trough of the sea?
A. Yes, sir.
Q. Lying unmanageable like a log?
A. Yes, sir.
Q. Did it rain any during this time that you were adrift?
A. That is more than I can say.
Q. Did you have occasion to pump your boat while you were adrift there?
A. No, sir.
Q. Did you try your pumps?
A. I don't know whether I did.

Re-direct:

Q. What you did from the time the bridle line parted up to the time of sinking was, you were carrying your boy across the boat, some one sung out to get the line from the cabin and fasten it, and you fastened it, and just after that the boat sunk?
A. Yes, sir.

George W. Shaldley, a witness for claimant, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Were you a fireman on board of the Quickstep at this time?
A. Yes, sir.
Q. Just state what was the condition of the weather when you left Atlantic dock on your voyage that morning.
A. It was a little hazy first.
Q. In relation to the wind?
A. Well, very calm.
Q. How far were you down the bay, and how far from Robbin's reef, at the time the storm first commenced?
A. Well, I suppose we must have been two-thirds of the way.
Q. State what was the character of that storm.

A. Well, the wind breezed up pretty free, and then it commenced blowing heavy.

Q. A gale.

A. Well, I count it a gale; it was blowing a good deal heavier than I should have wanted it.

Q. Did you see the bridle line break?

A. No, sir; I did not see it break.

Q. Where were you at the time the backing commenced?

A. On deck.

Q. Do you know Captain Byrne?

A. I saw him that night.

Q. Where was he at that time when you came out?

A. He was on our deck when I came out forward.

Q. And where was his man Pendergast?

A. Standing by the fire-room door.

121 Q. What was the condition of the "Citizen" at that time?

A. She was sinking.

Q. Did you see that boat before you started—the "Citizen?"

A. Yes, sir.

Q. How was she in relation to her depth in the water?

A. I thought she [she] was loaded pretty low.

Q. Was she loaded on an even keel, or how?

A. She appeared to me to be down at the head a little.

Q. What was the action of the sea upon that boat?

A. Washed right over her.

Q. Did you see her hatches?

A. Not after we started.

Q. When did you first observe the seas washing over her, and the condition of her hatches?

A. When they brought her out of the North river.

Q. At the time you were bringing her from Clarkson street to Atlantic dock?

A. Yes, sir.

Q. After you left there and started for New Brunswick, did you see her then?

A. No; I did not take much notice of her till she was sinking and going over.

122 Q. What do you know of her hatches?

A. Well, her hatch-combings were all gone on one side; you could put your hand in and see the grain.

Q. After she was sunk, did you see any portion of her remaining on the water?

A. When we came back to pick up the boats, her forecastle hatch was floating on the water.

Cross-examined by Mr. Scudder:

Q. How long had you been on board the Quickstep this time?

A. I had been on the Quickstep two seasons.

Q. Running in this same business?

A. Yes, sir.

Q. Did this blow come up suddenly that you speak of?

A. Yes, sir.

Q. Like a stroke?

A. The whole of this rose in about 10 minutes.

Q. Did it rain any?

A. Not much.

Q. Heavy rain?
A. Kind of drizzly.
Q. How was the wind?
A. About south, I guess.
123 Q. How long did you feel it before this boat sunk?
A. Well, it must have been an hour, or very near.
Q. Where were you when you first felt it?
A. About $\frac{2}{3}$rds of the way down the bay.
Q. About opposite what point?
A. I could not say.
Q. About how far from Robbin's reef when you first felt this sudden blow?
A. That I could not say, because the lights were on the other side of me.
Q. Did you hear any conversation between the captain of the Citizen and the captain of your boat?
A. No, sir.

Charles Beardsley, a witness for claimant, being duly sworn, testified, (direct examination by Mr. Haskett:)

Q. Were you engineer of the Quickstep at the time of this event?
A. Yes, sir.
Q. What time did you leave Atlantic dock on that voyage?
A. Well, I suppose about 3 o'clock—about $\frac{1}{4}$ past 3 when we headed down the river.
Q. What was the condition of the weather as to wind?
A. Very light wind.
124 Q. What was it when you got down near Robbin's reef?
A. It commenced blowing.
Q. To what degree did the wind increase?
A. Well, it increased very fast; go to blowing a perfect gale of wind, I should think.
Q. Within the space of what time?
A. I should think within the space of 10 or 15 minutes; I could not state exactly the time; a very short time.
Q. Did you perceive the boat "Citizen?"
A. I did, sir.
Q. Did you know anything about the "Citizen?"
A. All that I know is that she was in very poor condition—her decks, hatch combings, &c.—to carry a load of grain.
Q. Do you know when the line broke?
A. Well, no, sir; it broke, I suppose, when they commenced to back.
Q. (Libellant.) You were in the engine room?
A. Yes, sir; after the bells came to me to back, I stuck my head out of the window and the lines seemed to be parted; how long before, I cannot say.
Q. What was the condition of that sea?
A. Well, it was very heavy.
Q. The wind was from about where?
A. Well, I don't exactly know the point, but I should think about S. It was blowing in from the Narrows.
125 Q. Did you see any portions of this vessel when you came back to pick up these other boats?
A. No, sir; I did not.

Cross-examined by Mr. Scudder:

Q. You are a licensed engineer?
A. Yes, sir.
Q. Were you so at that time?
A. Yes, sir.
Q. Have you been on that boat ever since?
A. No, sir.
Q. How long had you been on her?
A. Well, I went on her the 1st of March that year, when navigation opened.
Q. Have you been in tug-boats around the harbor much?
A. Well, yes, sir; not much.
Q. Towing out to sea?
A. No, sir; I was on the "Mary Vaugham."
Q. Have you been down in the lower bay?
A. Well, yes, sir; I have.

William Smith called by the claimants, being duly sworn, testified, (examined by Mr. Haskett.)

Q. Were you cook on the Quickstep at this time?
A. Yes, sir.
Q. Do you remember the night you left on the voyage?
A. The 19th, I think, sir.
126 Q. You remember the time?
A. Yes, sir.
Q. Do you remember the condition of the weather at the time you left the Atlantic dock?
A. Well, it was calm; there was not any wind at all that I could discern.
Q. How far did you get down the bay before it commenced to blow; and state how near you were to Robbin's reef when the thing took place?
A. I can't say exactly how far we were from the reef.
Q. What was the character of the wind when you got down to Robbin's reef?
A. Well, it was a little from the eastward when we got down there.
Q. Did it blow light or heavy?
A. Well, a pretty good breeze, I thought, sir; not very hard until the wind came in from the southward.
Q. When it came in from the southward what was the condition of it then?
A. Well, the wind was very hard indeed, I thought.
Q. You know Byrne and his man Pendergast?
A. Yes, sir; I am acquainted with the captain. I live close by him.
Q. Where were you at the time the lines broke?
A. I was standing along by the pilot-house.
127 Q. Where was Byrne and his man Pendergast?
A. The captain stood near me on the boat.
Q. On your tug?
A. Yes, sir.
Q. And where did his man Pendergast sit?
A. He sat in my galley.
Q. They were not on the "Citizen?"
A. No, sir.
Q. How long had they been on board your boat?

A. I can't say exactly; but when I came out of the cabin, his man sat in the galley that time.
Q. About how long was that before the line broke?
A. It was about 15 or 20 minutes, I suppose.
Q. Where were you when the line broke?
A. I stood right along side of the pilot-house.
Q. Was Byrne on your boat at that time, and his man?
A. Yes, sir.
Q. In the same place?
A. Yes, sir.
Q. Did you look at that barge "Citizen?"
A. No, sir; I did not examine her any at all.
Q. What was the effect of the waves upon her?
A. Well, they were coming pretty hard on her.
128 Q. Did you see her forward hatch?
A. Yes, sir; I saw that. Two or three waves came over, and I think it was the last wave that came over that took it off, and I told Pendergast that I saw something go overboard, and he had better go and see what it was. He started to go, and got about midships and came back and said the boat was sinking; that was when the line broke—about the same time the line broke.
Q. (Libellant.) About the same time the bridle line broke.
A. Yes, sir.
Q. (Claimant.) The forward hatch had been washed away before the bridle line broke?
A. Yes, sir.

Cross-exam'd by Mr. Scudder:

Q. How long had you been on board the "Quickstep?"
A. One season and a half, I believe, sir.
Q. Are you on board of her now?
A. No, sir.
Q. When did you leave her?
A. About the time she got run into.
Q. When was that?
A. Along in the summer; the time I can't remember exactly.
129 Q. What were you doing up at that hour in the morning?
A. Well, I am always up on the boat.
Q. Did you do any work except cook?
A. I do anything I am asked to do, or see around the deck, to take in lines, or anything of that kind.
Q. Were you the only deck-hand?
A. No, sir; there was a man there besides. I was not acting as deck-hand; I was doing anything.
Q. Did you see this boat break loose?
A. No, sir; nothing till I heard the man tell the captain.
Q. When was that?
A. That was just before the head line broke.
Q. Where were you standing when you heard him tell the captain?
A. I stood in front of the cabin.
Q. Could you see the bridle line?
A. Yes; I could see it.
Q. The light shining on it?
A. Yes, sir; the forward light was shining.
Q. Did you see the deck-hand at that time?
A. He stood right side of me, near me, when he spoke about it.

Q. When did you get up that night—had you been up ever since you left the dock?

A. Well, yes, sir; pretty near.

130 Q. When did you get up?

A. I think the captain came there and called the engineer, and that waked me up.

Q. That was just before you started from Atlantic dock?

A. Yes, sir.

Q. Did you go to bed again?

A. No, sir; I went down in the after cabin; I did not turn in any more.

Q. What induced you to come out of the after cabin and come forward?

A. Well, I don't know, sir; I always get up when anything like that goes on.

Q. Anything like what?

A. Any noise.

Q. What made you come up from the after cabin and go forward at the time this line broke?

A. I was up before that, sir; and I saw this man Pendergast sitting in my galley.

Q. That was before the bridle line broke?

A. Yes, sir.

Q. Were you looking at it when it broke?

A. No, sir; I was not looking exactly at that.

Q. How do you know it broke?

131 A. Well, I heard the surge of the line forward; that was the way I came to take notice of its being broken.

Q. Did Captain Byrne or Pendergast either of them go on board the "Citizen" after the line broke?

A. I did not see them do so; they did not make any effort to go on board at all.

Q. Neither of them?

A. No, sir.

Q. They did not go aboard?

A. No, sir.

Q. And were not on there at any time?

A. Not any time that I saw, sir.

Q. Did you not tell Captain Byrne that night that the surging knocked you out of your bunk, and that you would not go on that tugboat any more if it cut up such work?

A. No, sir.

Q. Did you mention anything of the kind?

A. No, sir; nor never thought of such a thing to tell him.

William Rodan, called for the claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. You were master of the Lizzy A. Bennett?

A. Yes, sir; at that time.

132 Q. Do you know the boat "Citizen?"

A. Yes, sir.

Q. Did you observe the character of her load that day?

A. Yes, sir; I noticed her when she was loading and when she was loaded.

Q. Was she deeply laden?

A. Very deep, indeed.

Q. Was she on an even keel?

A. No, sir; I judge she was about a foot by the head. I could not tell by her marks, because I did not notice them.

Q. How long have you known the "Citizen?"

A. I have known her, I should judge, from 10 to 12 years.

Q. What was her condition?

(Obj. to.

Claimant's counsel proposes to show that she was in nocondition to go upon those waves—was open and broken, and on an uneven keel.)

The court: You can show whether the hatches were on, and whether she was on an uneven keel; but I don't want to go into the general condition of the boat.

Q. Do you know the time she left Clarkson street?

A. Yes, sir.

133 Q. What was the condition of the wind in relation to her passing over the bay at that time?

A. The wind was blowing very fresh; it had been blowing heavy through the day, and at the time she went out there, from 3 to 5 in the afternoon, the wind was not blowing altogether as heavy as it had been through the day; but I made a remark to some boatment standing around, "I wondered if they were going to take her down the bay that day;" and I also said I would not like to take my boat down loaded with grain as the wind was blowing, and my boat was the ablest boat out of the dock at that time.

Q. From your knowledge of the condition of that boat with that cargo on board, was it safe for her to have gone down the bay in that gale of wind?

(Objected to—taken subject to objection.)

A. No, sir; I would not have gone in the bay with her.

134

135 Summers Warwick, called by the claimants, being duly sworn, testified, (examined by Mr. Donohue:)

Q. What is your business?

A. My business has always been following the water.

Q. For how long?

A. Ever since 1832.

Q. Were you on board of the "Quickstep" at the time of the accident?

A. Yes, sir.

Q. You were the deck-hand?

A. Yes, sir.

Q. At the time you left the Atlantic dock, what was the character of the weather?

A. Well, when we went out of Atlantic dock the weather was very moderate, and as we got down to Robbin's reef the wind shifted—came out in what I call a squall; it blew pretty fresh.

Q. Do you know anything about the bowline or forward line that parted?

A. Yes, sir; I stood in front of the pilot-house and saw the line when it parted.

Q. Had that vessel been backing up to that time?

A. No, sir; I spoke to the captain as soon as I saw the line go; I told him he must back for to bring the boats' bows together.

Q. Was that done?

A. Yes, sir.

136 Q. Could you have gone on with the bows separated?

A. No, sir; not at all.

Q. What was the condition of the weather at that time?

A. The wind was about south, I should judge, as near as I know.

Q. As to the sea?

A. The wind was rolling in pretty sharp.

Q. What was your position in regard to the light-house—east or west of it?

A. We were west of it.

Q. About how far?

A. I should judge from 3 to 400 yards to the southward and westward of it.

Q. Did you say anything to Captain Byrne and his man here?

A. I did not, until the thing was over.

Q. You were standing forward of your pilot-house?

A. Yes, sir.

Q. Did you hear any order from your vessel or from anybody to get out a line?

A. I heard the captain say to get out lines, and I was trying to get out lines to save the boats on our starboard bow.

Cross-examined by Mr. Scudder:

Q. Did you discover that the after boat had broken adrift?

A. No, sir; not until after we commenced backing.

Q. And you did not commence backing until after the bridle line was broke?

137 A. No, sir; we did not.

Q. Did you report to the captain that [that] the after boat had broke loose?

A. No, sir.

Q. Who discovered first that the after boat had broken loose?

A. I could not tell you.

Q. How did you discover it?

A. I discovered it after we commenced backing, and after this boat sunk I saw the boat astern of her.

Q. That was the first you discovered of it?

A. Yes, sir.

Q. What made the bridle line break?

A. I suppose the sea and weather together.

Q. The sea did not break it?

A. I suppose it did.

Q. How?

A. By their jumping up and down.

Q. By what going up and down?

A. By the two boats.

Q. When did you first see Captain Byrnes that night? I mean after you left Atlantic dock.

A. I did not see him until after the thing was all over and we had started up to go into the harbor.

Q. Then where did you see him?

A. I saw him standing right aft by our bitts.

Q. Did you cut any lines that night?

A. No, sir; I did not.

Q. How did the lines get loose from the "Citizen" to the "Quickstep?"

138 A. Well, I could not tell you exactly; what I call the bowline parted.

Q. What other line?

A. The other lines I cannot tell how they got loose.

Q. There were 3 other lines?

A. No, sir; there were 2 other lines made fast to our boat; that is, what we call a towing line and a stern line; the tow-line must have slipped off our boat.

Q. Which side did you stand on?

A. On the starboard side.

Q. And the cook here stood along side of you?

A. No, sir.

Q. Where was he?

A. On the larboard side.

Q. Did he talk with you at all that night.

A. Not at all.

Q. Did you look in his galley at that time?

A. No, sir.

Q. Did you see Captain Byrne on board your boat at that time?

A. No, sir.

Q. How large is your boat?

A. That I could not say.

Q. Did you walk around it all [all]?

A. I did not walk around until after we started into the harbor.

Q. You stayed on the starboard side all the time?

A. Yes, sir.

139 Q. Are there any windows, through which you could see into the pilot-house?

A. Yes, sir.

Q. And on the other side, too?

A. Yes, sir.

Q. If Captain Byrne had been standing there, could you not see him?

A. I was not noticing him where he was, or any one else; I was attending to getting lines out. I did not notice any one but the captain in the pilot-house.

Q. I want to know whether you saw him?

A. I did not.

Re-direct:

Q. How high is your pilot-house above the deck?

A. That I could not tell you exactly.

Q. How high is the window that looks out of the pilot-house above the deck?

A. I should judge it was six feet; I could not say exactly; the bottom of the window was about six feet above.

Q. Is the floor of the pilot-house any higher than the deck of the tug?

A. Yes, sir.

Q. How many steps?

A. Two or three, I should think; about three feet higher; I never measured it.

Q. Do you know where the cook was that night?

A. I do not.

Q. Do you not know he was waked up after the shock of this ac-

140 cident, and got out of his bunk?

A. That I don't know.

Q. Do you know anything at all about where he was?
A. No, sir.
Q. Did he talk with you at any time about this accident?
A. Yes, sir.
Q. What did he say to you?
A. Why, he said to me that the captain of the "Citizen" asked him for an axe; I asked him for what purpose; he said to cut their stern lines; I says, Did you give it to him; he says, Yes, I did; I said, Did he cut them or you; he said he cut them.
Q. What further did he say?
A. I supposed to cut the boat from the tug.
Q. Did he not say something about leaving the "Quickstep" and going on some other boat?
A. No, sir.

(Claimant's case suspended for the purpose of allowing libellant's counsel to call some witnesses who desired to leave the city.)

141 [For libellant.]

Ephraim Kempton, recalled for libellant, an testified, (examined by Mr. Scudder:)

Q. When did you see this vessel before this accident?
A. Two or three weeks.
Q. What did you do?
A. We had her out and repaired her.
Q. How were her hatch combings?
A. Her hatch combings, deck, and sides were all new in 1861—new timbers.
Q. How was she at this time; were her hatch combings broken off?
A. No, sir.
Q. When was this?
A. About three weeks before the accident happened.

Cross-examined:

Q. How do you know the date of your repairs?
A. I knew when she met with the accident, and she had only made the one trip through.
Q. What month was it that you repaired her?
A. I think it was the latter part of September; I won't say positive; I think it was.
Q. In what year?
A. In 1865.
Q. How late in September?
A. Well, I can't say.
Q. How much would they amount to, those last repairs?
142 A. I don't think they amounted to any great amount at that time.
Q. How much?
A. Well, may be 50 or 60 dollars, somewhere about that; she was only caulked at that time. In 1861 she was stripped off, a new deck and new plank shear put in; and the sides, I think, were the biggest part new.

Re-direct:

Q. Did you examine around her hatch combings at the time you did this work?
A. Yes, sir.

Q. Did you do everything that was necessary to be done?
A. Yes, sir.

Hugh Gallagher, recalled for libellant, and testified, (examined by Mr. Scudder:)

Q. Do you know this colored man, the cook here, William Smith?
A. Yes, sir; I have seen him several times.
Q. Did you have any conversation with him about this accident?
A. Yes, sir.
Q. When?
A. After I was picked up.
Q. Where?
A. On the tug.
143 Q. What part of the tug?
A. I don't recollect now; it is a good while since.
Q. What did he say?
(Objected to that they have not asked the witness Smith anything about this conversation. Libellant's counsel proposess to show that he admitted to this witness that he was abed and asleep at this time. Taken subject to the objection.)
A. I was aboard the boat astern and I had two lines out, a new one and one partially worn, and the consequence was that when they broke at the two parts, one was aboard of the tug and the other aboard of Byrne's boat; I asked Smith on the tug what they did with my line, and he said he did not know anything about it; he said he had just got up out of bed when they were making such a fuss about the boat sinking; and I have never recovered any of them.
Adjourned to Tuesday, Feb'y 19th, 1867, at 11 o'clock a. m.

144

145 U. S. district court.—Before Hon. Judge Shipman.

CHRISTOPHER BYRNE
vs.
THE STEAM-TUG QUICKSTEP. } Tuesday, Feb'y 19th, 1867—3d day.

Index.

John Hayne, (recalled.)
Amos K. Evans.
George W. Heckman.
Robert T. Brown.
Timothy Seaman.
Ralph R. Osgood.
James Stiles.
John Strong.
John Bergen.
Joseph P. Barnes, (recalled.)

Warburton, Underhill & Bonynge, stenographers & law reporters, 30 Park Row, 117 Nassau st., New York.

146 John Hayne, recalled for claimants, (ex'd by Mr. Donohue:)

Q. When did the boat commence backing, before or after that bridle line parted?
A. After the bridle line parted.

Cross-examined by Mr. Scudder:

Q. Where were you standing at the time the bridle line parted?
A. On my cabin deck.
Q. On which boat was that?
A. Wide World.
Q. Did you see it part?
A. No, sir.
Q. How large a line was that bridle line?
A. 3½-inch.
Q. By 3½ inches you mean 3½ inches in circumference—round the line?
A. Yes, sir.

Amos K. Evans, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Were you aboard of the canal-boat Michigan at the time of the accident?
A. Yes, sir.
Q. She was one of this tow?
A. Yes, sir.
Q. Did you see the boat belonging to the libellant, the Citizen?
A. Yes, sir.

147 Q. What was her condition in the water; was she upon an even keel, or in what condition was she?
A. She was laden by the head.
Q. How much, think you?
A. Some six or eight inches; I could not tell exactly; some 6 to 8 or 10 inches, perhaps.
Q. What was the condition of the vessel as regards her load?
A. She was very heavily laden in the bow.
Q. Where was the boat Citizen in the tow?
A. She was lying on the left side of the tug.
Q. Which boat?
A. First boat.
Q. What was her condition, as she was laden, to meet a storm in the bay?
A. She was laden too heavily in the bow to meet a storm.
Q. When you left the Atlantic dock, what was the condition of the wind?
A. We had very mild weather, a little breeze blowing, very light.
Q. When did you, if at all, meet a change of wind; and, if you did, how far were you at that time from Robbin's reef?
A. I can't tell you the distance we were; I suppose over two-thirds of the bay.
Q. Towards Robbin's reef?
A. Towards Robbin's reef.
Q. What was the condition of that change?
A. Well, there came a strong wind which kept increasing till we got near Robbin's reef, and then there came a tremendous gale.

148 Q. State how far from Robbin's reef was that gale.
A. Well, I could not definitely answer that.
Q. What do you know about the breaking of that bridle line?
A. I don't know anything more about the break except the surge of the line swinging off.
Q. Did you see the line break?
A. I did not see the line break.

Cross-examined by Mr. Scudder:

Q. Where did you first see the Citizen?
A. At Atlantic basin.
Q. You did not see her before she got there at all?
A. No, sir.
Q. In Atlantic basin it was still?
A. Yes, sir; calm.
Q. Is it not always calm there?
A. Yes, sir.
Q. It is surrounded entirely by high buildings, except one cut in it?
A. Yes, sir.
Q. Where were you?
A. I was there loading wheat.
Q. Could you tell from there whether any wind was blowing down in the Narrows?
A. Well, I don't know as I could answer that questtion.
Q. You can tell whether you could or not?
A. No; I could not tell exactly the direction of the wind.
149 Q. Whether there was any?
A. Well, there was certainly some wind blowing, but a very light wind.
Q. How far were you from Robbin's reef at the time this wind increased?
A. About two-third way down the bay.
Q. How far would that be from Robbin's reef?
A. I could not tell exactly.
Q. Would it be a mile or a half a mile?
A. When the wind commenced to freshen, we were about a mile.
Q. When it commenced to blow hard, how far were you?
A. I can't tell you the distance.
Q. Did you see the light-house at the time?
A. Yes, sir.
Q. On what side of the tow were you?
A. The light-house was a little off to the east of us.
Q. What side of the tow were you?
A. On the right-hand side, outside of the Wide World.
Q. Fastened to her?
A. Fastened to the Wide World.
Q. When did you first discover the light-house?
A. Well, it was blowing very hard, and my lines all parted except my forward line, which I had three times round the forward cleet.
Q. When were you brought into Atlantic basin?
A. I loaded there, sir.
Q. How was the wind blowing as you looked toward the bow
150 of the boat, from the right hand or left?
A. The left hand.
Q. At this time the light-house was to the eastward of you?
A. I think to the eastward of us.
Q. Was that to the right or left of you?
A. To the left.
Q. Is your recollection about other matters as accurate as it is about that?
A. I don't know.
Q. Do you recollect distinctly about that?
A. I think I do.

Q. When did you first notice the Citizen was loaded by the head?
A. In the Atlantic basin.
Q. Before the tow was made up?
A. Yes, sir.
Q. Did you say anything to Captain Byrne about it?
A. No, sir.
Q. Did you go on her deck?
A. I crossed her deck to go on board my boat.
Q. Did you see anything on her hatches?
A. I saw bags.
Q. Did you see the boat that broke adrift from the stern?
A. I did not see her break adrift; I saw her after she was adrift.
Q. Did you know the Citizen sunk?
A. Yes, sir.
Q. How did you know?
151 A. By others telling me; I did not see it.
Q. Did you go off your own boat at all?
A. No, sir; I stayed on my own deck.
Q. Did not this sea way cause these boats to jump up and down, and cause you to loosen your lines?
A. The boats jumping up and down broke our lines except one, and I stood by that line so as to loose it off on the cleet.
Q. What were you loaded with?
A. I was loaded with wheat.
Q. Did you have any talk with Captain Ludlum about the loss of this boat?
A. I don't remember whether I talked with him concerning it or not; I don't know whether he was among the tug hands when we came in.
Q. Can you tell whether he was present?
A. I can't tell.
Q. Did he say anything about paying for this boat?
(Objected to.)

George W. Heckman, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. You were a hand on board the Michigan at the time of this calamity?
A. Yes, sir.
Q. Describe the character of the wind on that night after you left the Atlantic dock.
152 A. I can't tell the first start of the storm; it happened when we were in bed.
Q. When did you first perceive there was a heavy wind blowing?
A. I can't mention whereabout it was in the bay I first discovered it.
Q. What was the condition of the wind when you were awakened from your sleep, and came on deck before the boat sunk?
A. The wind blew terrible; it was very rough, and the water slashing over the boats terrible when I woke up.
Q. What was the character of that storm?
A. Well, I did not pay much attention which way the wind blew.
Q. (Court.) Can't you give some description of that storm?
A. All the description I can give was, the wind and the tide, I suppose, made the storm.
Q. (Court.) What kind of a storm was it?
A. Well, it was a heavy wind.
Q. (Court.) How heavy?

A. I can't mention how heavy it was.
Q. (Claimants.) Have you crossed that bay often?
A. Well, I have crossed it pretty often.
Q. How was the Citizen loaded?
A. She was loaded by the head.
Q. What did you do in relation to her?
A. I came across her when she lay in Atlantic dock.
Q. What was her condition on her deck?
153 A. Well, her deck did not look to be very good.

Cross-examined by Mr. Scudder:

Q. Where did you cross her deck?
A. Atlantic dock.
Q. What part of her?
A. The bow.
Q. Did you go across to some other vessel?
A. Came across her on to our vessel; she was inside of us.
Q. Did you stop and look around at her?
A. No, I did not; I just came right across, and I spied my eye on her and saw her deck was bad.
Q. How do you know she was loaded by the head?
A. The way I know, I saw her marks.
Q. What were her marks?
A. Her marks were considerably down by the head.
Q. What were the marks that you saw?
A. I did not see the six-foot mark on her bows; but at her midships I don't believe it was quite down to the water.
Q. Had she a six-foot mark amidships?
A. I don't know.
Q. Do you know she had a six-foot mark at the bow?
A. Well, all boats have.
Q. Do you know whether she had or not?
A. I don't know if she had or not.

154 Robert T. Brown, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Are you in the tug business; and, if so, from where to what place?
A. New Brunswick to New York.
Q. In what kind of vessels?
A. Propellers.
Q. What is the draft of water of your vessel?
A. 7 feet 4 inches.
Q. Do you know the Quickstep?
A. Yes, sir.
Q. What is her draft?
A. Seven feet and a half.
Q. Is it safe in going to New Brunswick with a tow and a propeller to pass inside of Robbin's reef, or to go outside?
A. To go outside, sir.
Q. (Court.) How about inside?
A. Unsafe, sir.
Q. (Claimants.) Is there a difference between the capacity of a side-wheel steamer to tow and a propeller, going through a narrow channel?
A. A great deal, sir.

Cross-examined by Mr. Scudder:

Q. How long have you been in the towing business?

A. Thirteen years.

Q. Are you a licensed pilot?

A. Yes, sir.

155 Q. Did you ever go inside of this inner channel?

A. I have, sir.

Q. How many times?

A. I cannot tell you.

Q. So many that you can't tell?

A. I have gone outside——

Q. How many times have you gone outside?

A. Very seldom. I took a loaded tow to New Brunswick from New York.

Q. How often have you been that inner way with a loaded tow?

A. I never go with a loaded tow, not from New York to New Brunswick.

Q. (Court.) Which channel do you take when you take a loaded tow from New York to New Brunswick?

A. I go outside of the light.

Q. (Court.) How often have you been from New York to New Brunswick with a loaded tow?

A. I have been on an average four times a week—three times a week.

Q. (Libellant.) How long?

A. Well, all last summer, anyhow; and for this last twelve or thirteen years.

Q. Have you always been on tugs?

A. Been nineteen years from New Brunswick to New York.

Q. Have you always been on tugs?

A. I have been on side-wheel boats.

Q. Where were you that night?

156 A. Northeast harbor.

Q. Where is that?

A. Just this side of Bergen point coming from New Brunswick to New York.

Q. The night the Quickstep sunk the boat, your boat was in Northeast harbor?

A. Yes, sir.

Q. What did you stop in there for?

A. It was blowing fresh, and I was late in the tide.

Q. You wanted to come through with the ebb tide?

A. I wanted to save the flood that I was on to New York.

Q. What time did you get into Northeast harbor?

A. I am sure I can't exactly say.

Q. As near as you can?

A. It was before dark.

Q. And at that time, how was the weather; was the wind blowing or not?

A. It blew fresh.

Q. Was anybody else tied up there at the same time?

A. Yes, sir.

Q. How long did you remain there?

A. I remained there till next morning.

Q. (Court.) Daylight?

A. Yes, sir.

Q. (Court.) I want you to describe the wind and weather that night.

157 A. Well, sir, it was blowing pretty fresh when I got there just before dark; then it stopped, and it blew harder about twelve o'clock.

Q. (Court.) Did the wind die away at any time after you got there?

A. Yes, sir.

Q. (Court.) What time?

A. Well, I suppose it was between the hours of 12 and 2 or 3.

Q. (Court.) Did it blow hard again?

A. Yes, sir.

Q. (Court.) How hard was the blow between 1 & 2 o'clock and daylight?

A. Well, it blew very hard between 3 & 4 o'clock.

Q. (Court.) What direction?

A. The wind was about S. S. E.

Q. (Court.) Any rain?

A. Well, yes, sir; drizzly rain.

Q. (Libellant.) When did the next flood tide make?

A. Well, I think it was high water at about ten o'clock at night, if I don't mistake. I forget how the tide was exactly. I never put my mind to that.

Q. You say you came in before dark, and you stopped because you did not have tide to take you through?

A. Yes, sir.

Q. You had not the flood tide with you?

A. I had the flood tide.

158 Q. It was not enough?

A. No, sir; it was high water that night, I think, about 7 or 8 o'clock.

Q. Then it was low water about 1 to 2 o'clock?

A. Yes, sir.

Q. Then the flood was again from 2 to 3—the first flood?

A. Yes, sir.

Q. Why did you not start then?

A. Well, it was night, and I had to land my boats in the East river, and I don't land them in the night.

Q. You did not want to start for that reason?

A. No, sir.

Q. How long have you been a licensed pilot?

A. Well, I got my license out last summer sometime.

Q. Is that the first license you ever had?

A. I was captain on a boat, and always had the boat's papers in my name.

Timothy Seaman, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Are you engaged in the tug business? and, if so, state from what place.

A. I have been from New York to New Brunswick for the last twelve months.

Q. What kind of boats?

A. Propellers.

159 Q. Drawing much water?

A. 6½ to 8 feet, 8½.

Q. Have you taken loaded tows from New York to New Brunswick?

A. Yes, sir.

Q. Which way do you take these boats?

A. I generally take them round the light-house—always do with a loaded tow [always do with a loaded tow]—the southward and eastward of the light-house.

Q. (Court.) On the outside?

A. Yes, sir.

Q. (Court.) Why do you take them on the outside?

A. Well, because it is safe, and because there is not water at low tide to go across the flats with loaded tows.

Q. When do you leave?

A. We leave on the last of the ebb, so as to go from Elizabethport with the flood.

Cross-examined by Mr. Scudder:

Q. How long have you been towing?

A. Between 18 & 19 years.

Q. How long between here and New Brunswick?

A. Been running between here and New Brunswick since 1840.

Q. Always on steam-tugs?

A. 1842 was about the first I went on a steamboat.

Q. And always on steamboats?

A. No, sir; the first, I think, was 1842 or 1843.

Q. Have you ever been inside through the inner channel?

160 A. Yes, sir.

Q. How many times?

A. Well, with a side-wheel boat, when I first commenced, generally went inside altogether. It was a light-draft boat, but then it was high water both ways most generally.

Q. You never have been through there at low water?

A. Yes, sir; but not with a loaded tow.

Q. Have you ever been through there at low water with a propeller?

A. No, sir; not with a loaded tow.

Q. Have you ever been with a propeller light?

A. No, sir; I have been running to Elizabethport since 1852, and I never came across the flats more than twice with a loaded tow.

Q. Are you a licensed pilot?

A. Yes, sir.

Q. How long have you been so?

A. Since 1852.

Ralph R. Osgood, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Are you engaged in the tug business? and, if so, state from where to where.

A. I have been engaged last season all the season from New York to New Brunswick.

Q. What was the vessel you towed with?

A. Propeller.

161 Q. How much water did she draw?

A. She draws different drafts at different times.

Q. When you have a heavy load from New York to New Brunswick, which way do you go, inside or outside Robbin's reef?

A. Outside.

Q. For what purpose?

A. First, because it is the most convenient and safest; it would not be using any skill at all to start from the point we start and go inside the light-house; it would be working against nature all the way.

Cross-examined by Mr. Scudder:

Q. Where do you start from?
A. Start from Atlantic dock.
Q. The basin?
A. Sometimes the basin, sometimes outside, and sometimes from Red Hook.
Q. Have you ever been inside the inner channel?
A. Yes, sir; both ways.
Q. How many times going down to New Brunswick?
A. Well, I have been down light and gone on the top of the tide.
Q. How many times?
A. I could not tell.
Q. Have you ever taken a loaded tow through there going to New Brunswick?
A. No, sir; never went through with a tow at all; I have been through there with a boat.
Q. Are you a licensed pilot?
A. Yes, sir.
Q. How long have you been?
162 A. Well, it has been nearly two years—a year and half or two years.
Q. Always on a propeller?
A. Yes, sir.

James Stiles, a witness for claimants, being duly sworn, testified, (examined by Mr. Haskett:)

Q. Are you in the tug business? and, if so, state in what kind of vessel.
A. Propeller.
Q. How long have you been in the tug business?
A. About seven or eight years.
Q. How long have you taken tows from the city of New York to New Brunswick?
A. Last year; I have been running to Elizabethport and places round there.
Q. How long to Elizabethport?
A. Well, the last six or seven years; ever since I have been tow-boating.
Q. Do you go inside or outside Robbin's reef with a heavy tow?
A. Outside.
Q. Why?
A. Because there is not water enough to go inside with a loaded boat, a propeller, to go through safe without rubbing the bottom.

Cross-examined by Mr. Scudder:

Q. Have you been through that inner channel?
A. Yes, sir.
163 Q. How many times?
A. I can't say how many times.
Q. So many that you can't remember?
A. Well, I never would set them down; I never keep account of them.
Q. Have you ever been through from New York to New Brunswick or Elizabethport?
A. I have been through light, not loaded.
Q. Have you ever taken a tow through?
A. No, sir; I have taken one light boat through.
Q. You never took a loaded tow through?
A. No, sir.

Q. How much water does your boat draw?
A. Seven feet.
Q. Have you ever been in a boat that drew more than that?
A. Not as I know of.
Q. Suppose a wind springs up and blows pretty stiff, which would be safest, inside or out?
A. Outside.
Q. Less dangerous outside?
Q. Yes, sir.
Q. Where do the two tides meet, the tide coming from New York and the tide from Elizabethport?
A. At the light-house.
Q. Does it make any rip there of any consequence?
A. Well, sometimes.
Q. Don't make much?
164 A. When the wind blows it does.
Q. Suppose the wind blows from the south?
A. It makes some sea.
Q. It is safer still on the outside?
A. I would rather take my chance outside than in.

Claimants rest.

Rebuttal.

John Strong, a witness for libellant, being duly sworn, testified, (examined by Mr. Scudder:)

Q. Where do you live?
A. New Brunswick.
Q. Do you know Wm. Smith, the colored man, who was cook on board the Quickstep?
A. Yes, sir.
Q. Do you know what his reputation is for truth and veracity in New Brunswick?
A. Well, in some respects some people might believe him, but I would not.
Q. (Court.) The question asked is, whether you know what his reputation in the community is?
A. I think it is not very good, sir.
Q. (Libellant.) Would you believe him under oath?
A. I would not.

165 Cross-examined by Mr. Haskett:

Q. Have you and he had any altercation together?
A. Never. He came into my house and stole my son's watch.
Q. That is the reason you would not believe him under oath?
A. Yes, sir.

John Bergen, a witness for libellant, being duly sworn, testified, (examined by Mr. Scudder:)

Q. What is your business?
A. Boatman.
Q. How long have you been a boatman?
A. 14 years.
Q. Do you know the Citizen?
A. Yes, sir.
Q. When did you see her last?

A. I saw her the day she loaded.
Q. On this trip that she was lost?
A. Yes, sir.
Q. Did you help to load her?
A. Yes, sir; I helped to trim her and load her.
Q. How was she loaded, and how was she trimmed?
A. Well, I went down in the hold and helped to trim her myself; put down her hatches, and put down her canvass tarpaulins.
166 Q. (Court.) Over her hatches?
A. Yes, sir; we had some grain in bags, and we put it upon deck on the stern hatches.
Q. (Court.) How was she trimmed?
A. Trimmed full in the hold all over.
Q. (Court.) How did she lie in the water?
A. As even as—I could think—on an even keel when she left Clarkson street.
Q. Were there any holes, through which you could see grain, round her hatches?
A. No, sir.

Cross-ex'd by Mr. Donohue:

Q. Where did she get her new deck?
A. Well, I think she got it the year before that, a year or two before that.
Q. Do you know where she got it?
A. Yes, sir; at Mr. Kempton's yard.
Q. What boat were you on then?
A. The Wm. H. Norton.
Q. You had a boat of your own?
A. Yes, sir.
Q. Who loaded this grain on board of this boat?
A. We trimmed it; me and his bowsman.
Q. Where was the grain you say was in bags put?
A. On the stern and forward.
Q. Can you tell how much astern and how much forward?
A. I think there was more put astern than forward.
167 Q. Had she a house astern?
A. Yes, sir.
Q. It was not put on that house?
A. No, sir.

Joseph P. Barnes, recalled for libellant, and testified, (examined by Mr. Scudder:)

Q. Do you know William Smith, this witness, who has been sworn here?
A. Yes, sir.
Q. Do you know what his reputation is for truth and veracity?
A. It is not very good, I believe.
Q. Would you believe him under oath?
A. I don't hardly think I would.
Q. Do you know Capt. Ludlum?
A. Yes, sir.
Q. Do you consider him a competent man to take charge of a steamboat?
(Obj'd to. Excluded.)
Q. The weather being as it was that night, as you have heard it

described, would there have been any difficulty whatever in taking that vessel inside of that channel?

(Obj'd to, that that part of the case cannot be reopened. Excluded.)

Cross-examined by Mr. Donohue:

Q. Where do you reside?

A. New Brunswick.

168 Q. Do you know Mr. Strong?

A. Yes, sir.

Q. Reside at his place?

A. Am a neighbor to him.

Q. Have you ever had this man Smith in your employ?

A. No, sir.

Q. Have you ever had any transactions with him?

A. No, sir; none whatever.

Q. Never have had of any kind?

A. No, sir; only just what I saw of him.

Q. Will you give me the name of any man who you say would give him a bad character?

A. There is a general talk among——

Q. Give me the name of any man.

A. Charles Strong; he has lived in the family; George E. Strong.

Q. There had been a difficulty about a watch between him and those folks?

A. Yes, sir.

Q. Was not that the whole of the transaction out of which this character arose?

A. I think probably there was something else.

Q. Do you know anything else from them?

A. I don't know.

Q. Did they say anything besides the watch?

A. They said they missed things out of the house.

Q. Was there anything else as to his character?

A. I don't know that they did.

Testimony closed.

169 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the eighteenth day of October, in the year of our Lord one thousand eight hundred and [sixty *marked out*] seven:

Present, the Honorable William D. Shipman, dist. judge.

CHRISTOPHER BYRNE
vs.
THE STEAM-TUG QUICKSTEP, her engine, tackle, &c. } 19—314.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that it be referred to one of the commissioners of this court, to ascertain and compute the amount of the damages in this action, & report the same to the court with all convenient speed, to the end that a final decree may be entered herein, apportioning such damages between the libellant & claimants respectively; the court deciding both parties in fault.

And it is further ordered & decreed that the question of costs be reserved until the coming in of said report.

WM. D. SHIPMAN.

170 (Endorsed:) 19 , 314 . United States district court for the southern district of New York. Christopher Byrne vs. the st.-tug Quickstep, &c.

T. Scudder, proctor for lib't.

Wm. J. Haskett, " " cl'ts.

Int'y decree & order of ref'r to compute damages with a view to apportionment thereof, &c.

Filed the eighteenth day of October, 1867.

171 U. S. district court.

CHRISTOPHER BYRNE
vs.
THE ST.-TUG QUICKSTEP, &c.

1867.] Ref'ce on decree.—T. Scudder, for lib'l't; W. J. Haskett, for claimants.

Lib'll't calls Christopher Byrne, (sworn:)

Am libellant; I owned the canal-barge Citizen; at time of collision she had on board 7,209 bushels of corn; I don't know the value of it.

The freight I was to receive on it was $108\frac{13}{100}$.

The canal-boat was worth to me $1,500 for her hull alone, without her rigging, anchors, cables, or cabin rigging or tarpaulins over the corn. Those things were worth $500, all that I lost besides the boat.

The Citizen was built at Alinickshunes, Penn'a. She was about 9 y'rs old when sunk. I bought her from Mr. Leffler, the man that built her; I was to pay $2,300 for her; that is about 11 years ago. I have owned her ever since. I have a bill of sale of that vessel in my own name conveyed to me. I am now in the coal business; my business for 5 out of the last 11 years was keeping livery-stable—store in New Brunswick.

I bought and sold 3 or 4 canal-boats during the 11 years. I am
172 a judge of the value of canal-boats; I have practiced boating this 29 years. I would not have taken $1,500 for this boat before the collision. She had four big lines; one worth $50, one worth $25, other two $10 each; 2 tow-lines, $15; tarpaulins, $30; anchor, $20; furnace, $7; my clothes, $50; bedding, 2 beds, $15 a piece; crockery, &c., $10; poles, $4; & feed-chest, $5; paints and brushes, $10.—(Ob'n that these things are not named in the libel.)—I don't know anything else to name, but other things were lost.

I got nothing for the boat after she was raised.

Re-direct:

I did pay every cent of the $2,300. She has cost me since $1,600 to repair her, about 3 years ago. I made her then near a bran-new boat. I valued her as good then as a new boat. I wouldn't have taken less than $2,200 for her then.

CHRISTOPHER BYRNE.

Sworn to before me this 1st day of November, 1867.

GEO. F. BETTS.
U. S. Comm'r.

Value of corn admitted to be lost	$5,693 78
Savings	880 00
	4,813 78

(Endorsed:) 19—314. U. S. district court. Christopher Byrne vs. the steamboat Quickstep, &c. Min. on ref'ce.

173 District court of the United States for the southern district of New York.

CHRISTOPHER BYRNE *vs.* THE STEAM-TUG QUICKSTEP, her tackle, &c. } Commissioner's report.

In pursuance of a decretal order made in the above-entitled cause, on the 18th day of October, in the year of our Lord one thousand eight hundred and sixty-seven, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of the damages in this action, to the end that a final decree may be entered herein, apportioning the same between the libellant and claimants respectively, and to report thereon to this court with all convenient speed—

I, George F. Betts, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the libellant and for the claimants, and have taken and examined the testimony offered in support of the libellant's claim and in opposition thereto, and do find that the amount of the damages sustained by the libellant is as follows, viz:

Value of canal-boat	$1,500 00
Rigging, furniture, &c	271 00
Cargo lost	4,813 17
Freight	108 13
	$6,692 91
Interest, 2 years @ 7 %	936 02
Making in the total	$7,628 93

The sum of seventy-six hundred and twenty-eight $\frac{93}{100}$ dollars, and that no damages were sustained by the claimants.

Dated the 1st day of November, A. D. 1867.

All which is respectfully submitted.

GEO. F. BETTS,
U. S. Commissioner.

T. SCUDDER, *Proctor for Libellant.*

174 (Indorsed:) Vol. 19, No. 314. United States district court for the southern district of New York. Christopher Byrne vs. the steam-tug Quickstep, &c. T. Scudder, proctor for libel't. Commissioner's report.

Filed the 6th day of Nov., 1867.

175 At a stated term of the district court of the United States of America for the southern district of New York, held at the city

hall in the city of New-York, on Wednesday, the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable Samuel Blatchford, district judge.

CHRISTOPHER BYRNE
vs.
THE STEAM-TUG QUICKSTEP, her tackle, &c. } 19—314.

On reading and filing the report of George F. Betts, esq'r, United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages by collision in the pleadings mentioned, with interest, the sum of seven thousand six hundred & twenty-eight $\frac{93}{100}$ dollars, ($7,628 93.)

On motion of Townsend Scudder, esq'r, proctor for the libellant, it is ordered, the proctor for the claimant not objecting, that the report be in all things confirmed, and that the libellant recover in this action against the steam-tug Quickstep, her tackle, &c., the sum of three thousand eight hundred & fourteen $\frac{47}{100}$, being one-half the am't of the damages sustained by the libellant, (no damages being sustained by the
176 claimant,) together with his costs to be taxed, and that said st.-tug Quickstep, her tackle, &c., be condemned therefor.

And on like motion it is further ordered that in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against Elias Runyon, the principal, and John R. Ford and Christopher Meyer, the sureties, on their bond given on the discharge of the property arrested, for the sum of seventeen thousand dollars, the amount of their said bonds executed on discharging the said steam-tug from custody.

And on like motion it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the libellant have execution to enforce satisfaction of this decree.

SAM'L BLATCHFORD.

TOWNSEND SCUDDER, *Proctor for the Libellant.*

(Endorsed:) Vol. 19, No. 314. United States district court for the southern district of New York. Christopher Byrne vs. the st.-tug Quickstep, &c. Townsend Scudder, proctor for libel't.

Final decree in rem. on confirmation of commissioners. Report and summary judgment on bond, under act of Congress, March 3d, 1847.

Filed & entered the 6th day of Nov'r, 1867.

Docketted judgment Nov. 7, 1867.

177 In admiralty.—U. S. district court, southern district of New York.

ELIAS RUNYON *et al.*, owners & claimants of the steam-tug Quickstep,
ads.
CHRISTOPHER BYRNE, lib'l't.

The clerk of this court will take notice that the claimants and respondents herein appeal from the decree in this cause entered on the 5th day of Nov., 1867.

November 11, 1867.

WM. JAY HASKETT,
Proctor for Cl'ts & Re'p'd'ts.

Endorsed: 19—314. In admiralty. U. S. district court, south'n district of New York. Elias Runyon et als., cl'ts of st.-tug Quickstep, ads. Christopher Byrne, lib't. No. to clerk of appeal. Haskett, proc. for cl'ts.

Filed Nov. 11th, 1867.

178

179 Circuit court of the United States of America for the southern district of New York in the second circuit.

CHRISTOPHER BYRNE, libellant, appellee,
vs.
THE ST.-TUG QUICKSTEP, HER TACKLE, &c., Elias Runyon et als., claimants, appellants.

Bond for costs and damages on appeal.

Know all men by these presents, that we, Christopher Meyer, claimant, William H. Breeden, and Nathan Southwick, are held and firmly bound unto the above-named libellant & appellee in the sum of eight thousand dollars, to be paid to the said libellant; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named claimants have prosecuted an appeal to the circuit court of the United States for the southern district of New York in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. MEYER. [L. S.]
WM. H. BREEDEN. [L. S.]
N. SOUTHWICK. [L. S.]

Sealed and delivered, and taken and acknowledged, this 19th day of Nov., 1867, before me.

JOHN A. OSBORN,
U. S. Comm'r.

180 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Breeden and Nathan Southwick, being duly sworn, each depose and say that he, Breeden, resides in the southern, & he, Southwick, in the eastern, district of New York, & that he is worth the sum of eight thousand dollars over and above all his just debts and liabilities.

W. H. BREEDEN.
N. SOUTHWICK.

Sworn to, this nineteenth day of November, A. D. 1867, before me.

JOHN A. OSBORN,
U. S. Comm'r.

(Indorsed:) Vol. 19, page 314. U. S. circuit court. Christopher Byrne vs. the st.-tug Quickstep, &c. Bond for costs and damages on appeal. Wm. J. Haskett, proctor.
Filed this 19th day of Nov., 1867.

181 In admiralty.—U. S. circuit court, southern district of New York.

ELIAS RUNYON *et als.*, claim'ts & resp'ts of steam-tug "Quickstep," app'llants,
ads.
CHRISTOPHER BYRNE, lib't & appellee.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William Goodhill, being duly sworn, says that he served the copy of the petition of appeal to the circuit court in this cause on the appellee's proctor, by leaving a copy thereof in his office in business hours, and got from him an admission of service on the 21 November, 1867.

WILLIAM GOODHILL.

Sworn before me this 21 Nov., 1867.

JOHN LANKTREE,
Notary Public New York.

182

183 U. S. circuit court, so. dist. of New York, 2d circuit.

THE STEAM-TUG "QUICKSTEP," ELIAS RUNYON, Wm. McDonald, et al., claimants & appellants,
vs.
CHRISTOPHER BYRNE, appellee.

To the hon. circuit court of the United States for the southern district of New York, in second circuit:

The appeal of the above-named appellants respectfully showeth:

That on or about the 17th day of November, 1865, the above-named Christopher Byrne, libellant, exhibited his libel in the district court of the United States for the southern district of New York against the said steam-tug Quickstep, claiming more than fifty dollars, praying, among other things, for the reasons set forth in the said libel, to which these appellants crave leave to refer, that the said steam-tug might be condemned and sold to pay the demands of the libellant and costs; and that thereupon process was duly issued out of said district court against the said steam-tug, her tackle, &c., and said vessel, by virtue thereof, was arrested by the said marshal; and on or about the 21st day of November aforesaid, these appellants duly appeared in said district court and filed their claim to the said vessel as owners thereof; and by
184 consent of libellant a bond stipulation, in the sum of seventeen thousand dollars, was filed in said court, and the said steam-tug Quickstep thereupon discharged from custody. That on the 27th day of December, 1865, these appellants filed their answer denying the right of libellant to recover, and praying that the same might be dismissed with costs, as by reference to said answer, (to which these appellants crave leave to refer,) will more fully appear.

That on the 14th day of February, 1867, the said cause came on to be heard before the Hon. Judge Shipman, U. S. district judge, sitting in admiralty in the southern district of New York, upon the depositions and proofs taken in the cause, and upon the testimony and proofs ad-

duced by the respective parties; and the said judge having advised thereon, on the 18th day of October, 1867, made a certain decretal order or decree in said cause, whereby it was, among other things, sentenced and decreed that the libellant should recover damages, as follows: That a final decree be entered herein apportioning such damages between the libellant and the appellants herein respectively, the court deciding that both parties were in fault, and that the question of costs be reserved until the coming in of said report, and that it be referred to a commissioner of this court to ascertain the amount thereof; and that,
185 thereafter, on the 6th day of November, 1867, a final decree was entered therein for the sum of the apportioned moiety of $\$7{,}628\frac{93}{100}$ dollars damages against these appellants.

And now these appellants are advised and insist that the said decretal order and decree is erroneous, inasmuch as the libellant was not entitled to the amount by him claimed, or any part thereof, and that his said libel should have been dismissed.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of the libellant to the next circuit court to be held in said district, and intend on said appeal to have the said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court, and they seek a new decision on the facts.

And these appellants pray that the said record and other proceedings may be returned to the said circuit court, and that the said decree may be reversed and the said libel dismissed, or such other decree therein made as to the said circuit court shall seem just, and that the appellee may be condemned to pay to the appellants their costs and damages in the premises.

WM. J. HASKETT,
Proc. for Cl't's & Appellants.

To T. SCUDDER, *Proc. for Lib't & Appellee.*

21 Nov., '67.

186 It is hereby agreed between the proctors in this cause that the stenographers' notes may be made up in the apostles and read on the appeal.

Nov. 21, '67.

W. J. HASKETT,
Pr. for Appellants.
TOWNSEND SCUDDER,
Proct. for Appellee.

(Endorsed.) 19—314. In admiralty. U. S. circuit court, 2d circuit New York. The steam-tug Quickstep, Runyon et al., claimants & appellants, vs. Christopher Byrne, lib'l't & appellee. Petition of appeal. Wm. Jay Haskett, proc. & adv. for appellants.
Filed Nov. 21, 1867.

187 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the city hall in the city of New York, on , the 14th day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, associate justice of the Supreme Court of the U. S.

CHRISTOPHER BYRNE, resp'd't,
vs.
THE STEAM-TUG "QUICKSTEP," her tackle, &c., app'l'nt.

This cause coming on to be heard on appeal from the district court:

Mr. Scudder reads test'm'ny from the apostles, and is heard on the part of respondent.

Mr. C. Donohue reads from the apostles, and is heard on part of appellants.

Mr. Scudder is heard in reply.

C'm ado. vult.

188

189 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, held at the city hall in the city of New York, on , the day of October, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the U. S.

CHRISTOPHER BYRNE, resp'd't,
vs.
THE STEAM-TUG QUICKSTEP, her tackle, &c., appellant.

This cause having been brought to this court by an appeal from the decree of the district court in favor of the libellants and respondent, and the same having been heard upon the pleadings and proofs in the district court, and due deliberation having been had, and this court having delivered its opinion and judgment affirming the decree of the district court, it is now, on motion of Townsend Scudder, proctor for the respondent, ordered, adjudged, and decreed that the said decree of the said district court be in all things affirmed, and that Elias Runyon, William McDonald et al., the appellants, pay to Christopher
190 Byrne, the respondent, the sum of three thousand eight hundred and $\frac{47}{100}$ dollars, being the amount directed to be paid by the said district court, together with the sum of $244 75, being the interest thereon from the time of the entry of the decree last aforesaid; and also the costs of said respondent in this court taxed or to be taxed; and that the respondent have execution therefor.

And on the like motion it is further ordered that a summary judgment be, and the same is hereby, entered against the said Elias Runyon, the principal, and John R. Ford and Christopher Meyer, the sureties, for the sum of seventeen thousand dollars, the amount of the bond and stipulation given to the marshal on the arrest of the vessel libelled, and that the respondent have execution thereon to satisfy this decree.

I consent to the entry of the within decree, copy to be served, and time to appeal.

Oct. 13, 1868.

W. JAY HASKETT.

Ent'r'd, filed Nov. 17, 1868.

REC. 368—6

191 Supreme Court of the United States.

STEAM-TUG QUICKSTEP, her tackle, &c., Elias Runyon et al., claimants and appellants,
vs.
CHRISTOPHER BYRNE, lib't & appellee.

To the honorable the Supreme Court of the United States:

The appeal of Elias Runyon, William McDonald, John R. Van Arsdale, Isaiah Rolfe, Evert Huyler, John Rolfe, the above-named claimants and appellants, respectfully show that on the 17th of November, 1865, the above-named Christoper Byrne filed his libel in the district court of the United States for the southern district of New York, against the steam-tug Quickstep, in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the canal-boat Citizen, by collision with the said steam-tug, on the 18 day of
192 October, 1865, and that the said steam-tug Quickstep was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and the said libellant replied thereto, and such proceedings were had in the said cause that, on the 18th of October, 1867, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant should recover damages as follows: That a final decree be entered herein, apportioning such damages between the libellant and the appellants respectively, the court deciding that both parties were in fault, and on the 6 of November, 1867, a final decree was entered thereon for the sum of the apportioned moiety of $7,628 93, damages against these appellants.

And that, after such final decree, your petitioner duly appealed therefrom to the circuit court of the United States for the southern dis-
193 trict of New York, and the said cause was removed thereby into the said circuit court and there tried anew; and such proceedings were had in the said circuit court that afterwards, on the 3th day of October, 1868, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that these said appellee have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleading, depositions, evidence, and proceeding in said cause may be sent to the Supreme Court of the United States without
194 delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit court and every part thereof may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York.

WM. JAY HASKETT,
Proc. & Advo. for Appellant.

(Indorsed:) U. S. Supreme Court. The steam-tug Quickstep, Elias Runyon et al. claimants & appellants, vs. Christopher Byrne, libellant & appellee. Petition of appeal. Wm. Jay Haskett, proc. & advo. for appellant.
Filed Oct. 24, 1868.

I admit due service of a copy of the within petition of appeal.
Oct. 24, '68.

SCUDDER & CARTER.

195 Supreme Court of the United States of America for the southern district of New York, in the second circuit.

CHRISTOPHER BYRNE, lib'l'nt & appellee,
vs.
THE STEAM-TUG QUICKSTEP, HER TACKLE, &c., Christopher Meyer et al., cl'nts & appellants.
} Bond for costs.

Know all men by these presents, that we, Christopher Meyer, W. H. Breeden & Nathan Southwick, are held and firmly bound unto the above-named libellant and appellee in the sum of ten thousand dollars [dollars], to be paid to the said lib'l'nt & appellant; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 9th day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named cl'nts & appellants have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the south'n district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named cl'nts & appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. MEYER.
W. H. BREEDEN.
N. SOUTHWICK.

Sealed and delivered, and taken and acknowledged, this 9 day of Oct., 1868, before me.

GEO. F. BETTS, *U. S. Com.*

196 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Breeden & Nathan Southwick, being duly sworn, each depose and say that they reside, the said Brieden in the southern, & the said Southwick in the eastern, dist. of New York, & each says that he is worth the sum of seventy thousand dollars over and above all his just debts and liabilities.

W. H. BREEDEN.
N. SOUTHWICK.

Sworn to, this 9 day of Oct., A. D. 1868, before me,
GEO. F. BETTS, *U. S. Com.*

(Indorsed:) Vol. . Page . U. S. circuit court. Christopher Byrne, lib'l't & appellee, vs. steam-tug Quickstep, her tackle, &c., cl'nts & appellants. Bond for costs on .

Approved.
Oct. 23, 1868.

CHAS. L. BENEDICT, *Proctor.*

Filed this 23d day of Oct., 1868.
Approved:

TOWNSEND SCUDDER,
P. for Appellees.

197 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

Whereas Elias Runyon and others, claimants of the steam-tug Quickstep, have lately appealed to the Supreme Court of the United States for the southern district of New York, in the second circuit, made in favor of you, thes aid Chistopher Byrnes, ag'st the said steam-tug Quickstep, her tackle, &c., and have filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the 1st Monday December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern dist. of New York, in the 2d circuit, the 23d day of October, in the year of our Lord 1868, and of the independence of the United States ninety-second.

CHAS. L. BENEDICT.

198 I admit service of a copy of the within original citation.
SCUDDER & CARTER.

Endorsed: Circuit court of the U. S., south. dist. of New York. The steam-tug Quickstep, Elias Runyon et al., cl'nts & appellants, vs. Christopher Byrne, lib'l'nt & appellee. Citation. W. J. Haskett, pr. for lib'l'nt.
Filed Oct. 24th, 1868.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York in the second circuit, do hereby certify that the foregoing pages, numbered from one to 200, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case Christopher Byrne against the steam-tug Quickstep, her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10 day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the .

[SEAL.] KENNETH G. WHITE, *Clerk.*

U. S. Supreme Court.

STEAMTUG QUICKSTEP, ELIAS RUNYON, *et. al.*
Claimant, Appellant,

vs.

CHRISTOPHER BYRNE,
Libellant and Appellee.

POINTS FOR APPELLANT.

Wm. Jay Haskett
BEEBE, DONOHUE & COOKE,
Plaintiff's Attorneys.

New-York:
GEORGE F. NESBITT & CO., PRINTERS,
COR. PEARL AND PINE STREETS
1870.

U. S. Supreme Court.

STEAMTUG QUICKSTEP, ELIAS RUNYON, *et. al.*
Claimant, Appellant,

vs.

CHRISTOPHER BYRNE,
Libellant and Appellee.

POINTS FOR APPELLANT.

BEEBE, DONOHUE & COOKE,
Plaintiff's Attorneys.

New-York:
GEORGE F. NESBITT & CO., PRINTERS,
COR. PEARL AND PINE STREETS.
1870.

U. S. Supreme Court.

STEAMTUG QUICKSTEP, ELIAS RUNYON, *et. al.*
Claimant, Appellant,
vs.
CHRISTOPHER BYRNE,
Libellant and Appellee.

Appellant's Brief and Points.

In this case the libel was filed by the owner of a canal boat, to recover for injuries to his boat and loss of a cargo he was carrying, in consequence of the negligence of the Appellant's tug.

The libel sets out a contract to tow, and alleges as breaches of it and on which the libellant is entitled to recover, (fol. 2, Art. 3,) that the contract was to tow to New Brunswick, but she did not, but deviated to Atlantic Dock.

(Art. 6, fol. 4,) that the tug attempted to tow too many loaded boats, and (Art. 8, fol. 5) that while being towed, one of the boats broke loose, and that while backing, in attempting to pick her up, the injury happened to this canal boat.

On these grounds the answer takes issue, that the boat was towed in the usual way, no contract to go direct; that the number of boats was not too many, and that the injury occurred by the breaking of the bridle line in a storm.

On the trial of the cause the libellant undertook to prove additional grounds of negligence. That the mode of making up the tow was improper—that the channel taken was not a proper one.

The cause was tried before his Honor, Judge Shipman, in the District Court, who held that the libellant and claimant were both in fault, and divided the damages. In giving this judgment the learned Judge gave no opinion, and found no facts whatever. (See copy decision at the end of the Brief.)

On appeal, his Honor, the Circuit Judge, gave an opinion, (see at end of the Brief, and in which no facts are found.) From this decree the claimants appeal.

FIRST.—The entire scope and object of an admiralty appeal, is to bring up the facts in the cause, and to have a rehearing on them, and while the Court may, from time to time, speak of not reviewing the facts, it is submitted that both on principle, they are bound to do it,

and on precedent, they have done it. Schooner Catherine, ad. Dickenson, 17 How. 170.
Sturges *vs.* The R. L. Maybe, 21 How, 451.
and it is respectfully submitted, that the Court will rehear, review and examine the evidence; and only where the evidence is balanced, will they refuse to reverse, that where the facts on which a judgment below is founded, are clearly found against the weight of evidence, the Court will reverse. The rule is not the same with a jury's verdict, because whether for good or bad logic, in the original settlement of that principle, the verdict of twelve men, it was supposed, disposed of any fact properly submitted to them, un-

less even in that case, the verdict was clearly against evidence.

On questions of fact, where the Court below disposes of them, as in equity cases, this Court, has in most important cases, examined into and reversed on the fact. The various phases of the so-called *Gaines* case furnish a most pointed example.

SECOND.—But here, it is submitted, the case comes to this Court free from all question of a prior disposition of *any fact.* Litigants have the right to a fair hearing and disposition of all the facts of their case. The claimants here are engaged in a branch of business, that it is important to them to know on what their rights depend and on what facts negligence is to be legally implied, what their duty is, and what is a performance of it. The object of their defence was to demonstrate what had, as matter of fact, been done on this contract; and that being found, or any set of facts being found, what duty resulted, and by implication of law whether a default existed against them, or whether they had performed their duty, or in what they failed. Up to this moment, from any opinion, intimation or fact found, they are entirely ignorant of what their negligence consists, whether the Judge of the District held them common carriers, or on what principle he held them, or for what want of diligence, or whether he held them as insurers, does not appear. We again submit that the claimants have a right to complain. They have been put to large expense in trying to obtain a judgment of their conduct in regard to any facts, and they are yet without it.

On the trial of the cause the libellant undertook to prove additional grounds of negligence. That the mode of making up the tow was improper—that the channel taken was not a proper one.

The cause was tried before his Honor, Judge Shipman, in the District Court, who held that the libellant and claimant were both in fault, and divided the damages. In giving this judgment the learned Judge gave no opinion, and found no facts whatever. (See copy decision at the end of the Brief.)

On appeal, his Honor, the Circuit Judge, gave an opinion, (see at end of the Brief, and in which no facts are found.) From this decree the claimants appeal.

FIRST.—The entire scope and object of an admiralty appeal, is to bring up the facts in the cause, and to have a rehearing on them, and while the Court may, from time to time, speak of not reviewing the facts, it is submitted that both on principle, they are bound to do it,

and on precedent, they have done it. Schooner Catherine, ad. Dickenson, 17 How. 170.
Sturges *vs.* The R L. Maybe, 21 How, 451.
and it is respectfully submitted, that the Court will rehear, review and examine the evidence; and only where the evidence is balanced, will they refuse to reverse, that where the facts on which a judgment below is founded, are clearly found against the weight of evidence, the Court will reverse. The rule is not the same with a jury's verdict, because whether for good or bad logic, in the original settlement of that principle, the verdict of twelve men, it was supposed, disposed of any fact properly submitted to them, un-

less even in that case, the verdict was clearly against evidence.

On questions of fact, where the Court below disposed of them, as in equity cases, this Court, has in most important cases, examined into and reversed on the facts. The various phases of the so-called *Gaines* case furnish a most pointed example.

SECOND.—But here, it is submitted, the case comes to this Court free from all question of a prior disposition of *any fact.* Litigants have the right to a fair hearing and disposition of all the facts of their case. The claimants here are engaged in a branch of business, that it is important to them to know on what their rights depend, and on what facts negligence is to be legally implied; what their duty is, and what is a performance of it. The object of their defence was to demonstrate what had, as matter of fact, been done on this contract; and that being found, or any set of facts being found, what duty resulted, and by implication of law whether a default existed against them, or whether they had performed their duty, or in what they failed. Up to this moment, from any opinion, intimation or fact found, they are entirely ignorant of what their negligence consists, whether the Judge of the District held them common carriers, or on what principle he held them, or for what want of diligence, or whether he held them as insurers, does not appear. We again submit that the claimants have a right to complain. They have been put to large expense in trying to obtain a judgment of their conduct in regard to any facts, and they are yet without it.

THIRD.—Before discussing the questions of fact in the case, let us see, as matter of law on this contract, whatever it was, what was the duties and obligation of the claimant. That they were not in law carriers, is clear.

See 13 Wend, 383; Alex. *vs.* Green, 3 Hill, 9.

This case was afterwards reversed in the Court of Errors. See 7 Hill, 533.

But the Court, in reversing, did not lay down any principle, the original case having been heard before the Supreme Court, of which Judge Nelson was a member. The case and reversal afterwards came to be reviewed by the Court of Appeals, in the case of Wells *vs.* T. S. Nav. Co., 2 Comstock, 204, and the true doctrine will be found laid down in that case. The claimants were not even bailees. They had made a contract, and it is simply to see whether they used the diligence as a contractor, which the law requires, that the Court is called on to determine.

See also 1 Benedict, 169.

FOURTH.—In determining this question, the next thing to determine is what are the issues before the Court, and what evidence have we applicable to them. The sole object of pleading is to have before the Court, on the side, the grounds on which the libellants seek to recover, and what the claimant takes issue on or sets up in his defence, and the libellant will not be permitted on the trial of the cause to set up a new cause of action.

See 1 Story, 331, The Boston;
1 Swa., 358, The North America;
1 Swa., 518;
1 V. Lush, 56, The Ann;

11 N. Y. Legal Ob., 267, Jola & Sampson;
2 W. Rob., 193, 209.

To hold any other rule opens the door to the grossest fraud, and places a hardship on a defendant he is not bound to meet.

FIFTH.—As matter of fact, what is set up in the libel and what is proved under it?

The allegation is in substance, that a contract was made to tow direct and we deviated; that we took too many boats; that in backing, to pick up another boat, we injured this boat, and sunk her.

Now what is the proof as to the actual contract?

Byrne, libellant, fol. 33, on direct, when left at Atlantic dock, "I asked him how long he was going to leave me there." At fol. 43 he tells the whole conversation, and fails entirely to show any contract to go direct.

Pendergrast, for libellant, at 62, shows nothing said about going direct. Now, not a single objection was made to stopping or going to Atlantic Dock, and he is now estopped from setting up such a cause of action; he cannot stand by and let a wrong be committed, take a changed performance, and yet recover. Lebengood, for us, at 116, proves the custom.

As to number of boats being too much, Byrne, libellant, who never towed with us before, fol. 42, says there were too many; and yet, fol. 47, he says he made no objection to the mode of making up the tow or number of boats—he said nothing.

Again, we say that he had no right to stand by and see a tow made up which he, having any experience (if

he had it), knew was wrong, as to number of boats, and yet take this modified performance, and yet recover from us for a loss.

Pendergrast, having more experience than himself, says, at fol. 70, in answer to the question, Was there any difficulty you found with the tow, excepting the way the boat was made fast to yours? Answer, Not that I know of.

Here is the captain and his men at variance.

For us, our captain, fol. 95, shows it properly made up; again, at fol. 103, shows usual number of boats. John Hayne, 143, same. Without referring to other parts of the case, is it not a little singular that not a man in the tow whimpered anything against the number of boats? some like Hayne having a life long experience.

The next ground is, that we lost a boat, and, in backing for her, ran against the boat of libellant.

As matter of fact, this statement is an impossibility. As the boats were fastened together, and with the head lines not parted, their bows would be brought together, not their sterns, as can be easily demonstrated; and it is evident that no such injury could come by backing in the way stated; and, secondly, that the backing was not as claimed.

The evidence is clear as to what caused the backing, and that it was necessary.

Byrne's evidence shows that he did not know the bridle line parted.

Ludlum, fol. 97, shows it as we state.

Lebengood, 114, same.

Warwick, 135, same; saw it part.

Hayne, 146.

Now, it is clear from all the evidence that we started with moderate weather, Byrne, fol. 34; Ludlum, 94;

Hayne, 108; Lebengood, 113; Shaldley, 120; Beardsley, 123; Smith, 126; Evans, 147.

That the storm came on, and, without our fault, the line parted, and that the only mode left for us was to back; to push these vessels against the water spreading out, was to destroy them; and it is evident as Byrne did not see the line break, that when it broke, the sterns came together, and if any break occurred it did then.

Now, these are all the allegations in the pleadings, and if the Court will permit them to go out of them, how does the case stand?

That the boats were not properly placed together. As to this point, Byrne says: (foot page 17,) he paid no attention to boat astern. Pendergrast says too far apart, but nothing is shown to have resulted from that being so. Did not back for that boat.

All the evidence for us cited, above on the question of making up the tow, applies on this.

As to the channel taken—No such allegation is made in the libel, and no pretence made about it being a fault until the trial.

All the persons on the tow but their captain found no fault with the channel. Ludlum, 96, Brown 134; Seaman, 159, Osgood, 161, Stiles, 162, witnesses for us show the channel taken the only one; it being unsafe even for the Quickstep to go inside, she was not bound to.

Beecher *vs.* Bechtel, 3; Blatch, 40.

This states a fair analysis of the facts, and on it we submit that on all the charges the libellant has failed. The burden of proof is on him to make out this negligence.

On our side, although not called on to do anything but to wait until they have made out a case, have yet fully proved an entire want of negligence. We say, that having started with fair weather, and reason to

suppose we could tow through, met with a severe storm, which broke this line, and this led to the loss; the vessel being deeply loaded, and not protected, sunk. Byrne's own account of the loss, as first given, agrees with ours (fol. 33). As the Court below's own notes (the record shows) but called attention to the conflicting statement of Byrne. First he says, (at fol. 34), little blow until they got to Robbin's Reef light; but at fol. 36 he says no increase of wind that he knew of. All the evidence on our side shows that the change did take place.

All the claimants are liable for is the exercise of such diligence as is called for from other persons making contracts for the performance of service and no more, and the onus is on the libellant to show that negligence.

SEVENTH.—If the loss arose, or is in anywise attributable to negligence, on the part of the libellant, he cannot recover. The rule in regard to the apportionment that obtains in admiralty in collision cases has never been extended, it is submitted, beyond that class of cases, and it would be introducing a new and novel rule to do so. Any negligence in the party contracting for service, and from which a loss occurs, leaves him to sustain his own loss; even in the case of a common carrier this rule prevails.

Here the Courts below have, if their finding is to be sustained, found such negligence, and if the Court here feels bound to sustain the decree as to the finding of fact, then, as matter of law, the decree must be reversed, because it finds a state of facts on which no recovery can be had.

It is respectfully submitted that whatever view is to be taken of the case, the decree must be reversed if the Court will hold that a decree which finds no fact or facts, but a simple legal conclusion, cannot be examined, then the decree must be reversed as finding the libellant in fault in a case where such fault prevents a recovery. If the evidence can be re-examined, then there is no negligence shown on our part.

W. Fulton *vs.* Hudson River Steamboat Co., 37 New-York, 210.

And cases cited.

C. DONOHUE,

of Counsel.

U. S. District Court.

SOUTHERN DISTRICT OF NEW-YORK.

CHRISTOPHER BYRNE,
vs.
THE STEAM TUG "QUICKSTEP," &C.
} *Copy Decision.*

SHIPMAN, J.—In this case I find both parties in fault, and therefore direct that a decree be entered apportioning the damages, with an order of reference to a Commissioner to compute and report the same.

(A true copy from the original on file.)

GEO. F. BETTS, *Clerk.*

U. S. Circuit Court.

SOUTHERN DISTRICT OF NEW-YORK.

CHRISTOPHER BYRNE,
vs.
THE STEAM TUG "QUICKSTEP."
} *On Appeal before Judge Nelson.*

This was an appeal by the claimants of the "Quickstep" from a decree made by Judge Shipman, which held the tug liable for a portion of the damages claimed by the libellant.

NELSON, C. J.—The libel is filed in this case by Byrne to recover damages for the loss of his canal boat and cargo of corn, which the respondent undertook to tow from New-York to New Brunswick, N. J. The Court below held that both the tug and tow were in fault under the circumstances in which the loss occurred, and divided the damages. The testimony is quite voluminous and conflicting, and the question one mainly of fact, with which we are not disposed to interfere, acquiescing in the decree below. Decree affirmed.

For Libellant, Mr. SCUDDER,
For Appellant, Mr. HASKETT.

Supreme Court of the United States.

STEAMTUG "QUICKSTEP," &c.
ELIAS RUNYON, &c.,
CLAIMANTS—APPELLANTS,
vs.
CHRISTOPHER BYRNE,
APPELLEE.

STATEMENT AND POINTS FOR LIBELLANT AND APPELLEE.

The Libel was filed in this cause to recover damages sustained by the loss of the canal boat "Citizen," her freight and cargo, while being towed from New York to New Brunswick, in the State of New Jersey, by the "Quickstep."

The Libel alleges the ownership of the canal boat, the use to which she was put, the lading with corn, the hiring of the "Quickstep" to tow her to New Brunswick for a stipulated price, unreasonable delay in the performance of the contract, &c. (See folios 4, 5, 6.)

The Libel further alleges that the canal boat was staunch, &c., and under the complete control of the "Quickstep;" that the libellant knew nothing about the extent of the tow which the "Quickstep" proposed to take. The libel further alleges the loss of the canal boat, with her cargo, through the carelessness and mismanagement of those on the "Quickstep," and designates about the time and locality of the loss; that the same occurred without any fault on the part of the canal boat and entirely through the carelessness of the "Quickstep," and prays judgment, &c.

The answer substantially denies these allegations and sets up the plea of inevitable accident; or, perhaps, the defence might better be described as pleading "the act of God."

The evidence upon the trial was conflicting. This is the invariable rule in collision cases.

It is not to be denied but that a large loss of property has taken place. This loss must be borne by some one. The question is who occasioned the loss?

The loss can only have occurred in one of four ways.

1st—*Act of God.* In this event it is conceded that the tug is not responsible.

2d—*Mismanagement* on the part of the tug. In this event it must be conceded that the tug is responsible.

3d—*Mismanagement* on the part of the canal boat where no fault can be charged to the tug. In this event it must be conceded that the tug is not responsible.

4th—*Mismanagement* on the part of the tug and the canal boat conjointly. In this event the loss may be divided.

It is respectfully submitted that the loss in this case comes under the second enumeration.

Point First.—The testimony on both sides shows that the tow is made up exclusively by those managing the tug; that the canal boatmen have no voice in the matter. In this case the captain of the Citizen did not know how many boats the tug would take nor of what their cargo consisted. (Folio 33, 34, &c.)

The lines were furnished by the canal boats; the manner of fastening was determined by the tug boatmen. The bridle-line which broke was not furnished by the Citizen. (Folio 111 and 112.) The disaster, according to the claimant's testimony, was caused by the breaking of this line. By the same testimony it appears that the line was an old one, half-worn and parted close to the bitts of the boat on the starboard side. (Folio 113.)

It is clear, therefore, that in the claimant's view of the case, had this line not parted, the accident would not have occurred.

The point, therefore, arises, who is to be chargeable with the duty of seeing that the lines are proper and sufficient. It is respectfully submitted that the libellant ought not so to be charged, for he did not furnish the line, did not know how many boats were to be towed; had no voice in the making up of the tow. It follows as a necessary conclusion that if the loss occurred by reason of the insufficiency of this line, the tug boat must be responsible.

This point is made from the claimant's view of the case.

Second Point.—It is submitted that the evidence is plenary to show incompetence on the part of the "Quickstep," for these reasons: she was not sufficiently manned, she had but one deck hand (Fol. 104); she did not have any pilot (Fol. 103), she was in charge of a man who had only been on a steamboat for a little over one year (Fol. 100), in any capacity. Before taking charge of the "Quickstep" he had always been on sailing vessels (Fol. 102). The "Quickstep" started at an unusual hour, of a dark night, with a heavy tow insufficiently secured, and pursued the most dangerous channel. The master was bound to know the draft of his boat, and if she drew too much water to go through a safe channel, he should have had at least the good judgment to have had the benefit of daylight in going through a dangerous one.

Third Point.—The Plea of a sudden gale arising is plainly an afterthought, gotten up as an excuse. Had there been any such gale, the canal boats that were adrift would have felt the violence of it—one drifted about at the mercy of this gale, until picked up; this one was laden with iron; she met with no damage. (Folio 118, &c.) The other anchored and lay, without difficulty, until picked up. Had there been any such gale as was pretended, it is plain that the boat drifting at the mercy of the wind and waves, laden with iron, would have gone where the "Citizen" went, in less time than the claimants took to describe the gale.

Fourth Point.—The wind was abeam, by the claimant's testimony (Folio 98.) This being the case, when the bridle line broke, the boats on the port side would be blown directly against the tug, and would make a lee for the boats on the starboard side, so that it would be impossible for the bows of the boats to be separated. It is plain that the bridle line broke from its insufficiency, and that the holes were knocked into the "Citizen" by the "Quickstep," crushing against her, after she commenced to back.

Fifth Point.—No fault was shown on the part of the libellant. His boat was shown to have been in good order and properly laden by the men who repaired and loaded her (Folio 165.) The attempt on the part of the claimants to prove the "Citizen" to have been in bad order and improperly loaded, failed so signally

as to give rise to the imputation of similar weakness in their other defences.

Sixth Point.—It is respectfully submitted that the principles of law applicable to towing boats, are analogous to those applicable to common carriers. The ground upon which common carriers are held to such strict accountability, is, that if the obligation imposed upon them were one of care and dilligence only, in every case of loss a difficult question of fact would arise as to whether the requisite degree of care and dilligence had been exhibited. The carrier would always have the advantage, for the reason that all the witnesses, as a rule, would be in his service. Hence, for the purpose of attaining justice, the rule has been established, that the *onus probandi* is on the carrier. The formula is clear, "unless the carrier can show that the goods have been lost by act of God, or the public enemies, he must be held responsible."

Seventh Point.—It cannot be denied but that skill, care and diligence must be exercised on the part of the tug boat in cases of towing. It follows that the tugboatmen must be called upon to prove that they have exercised skill, care and diligence. In this case it is respectfully urged that there has been an utter failure to show freedom from fault on the part of the "Quickstep."

Eighth Point.—This case is very similar to that of Langley against the "Syracuse." The line of defence is almost identical. In that case the "Syracuse" attempted to defend herself on the ground that the accident was inevitable. *The facts*, as shown by the claimant, were as follows: The "Syracuse" started to tow a large number of boats from Albany to New York. When rounding the Battery, the boat of the libellant swung, owing to the force of the tide, against the bow of a vessel lying at anchor and was sunk.

The accident occurred about mid-day. The "Syracuse" had at the time one helping tug. She was held responsible for the loss on the ground that she had not used due dilligence.

Ninth Point.—It was not necessary for the libellant to specify the particular act or acts of negligence. It

was sufficient for him to allege negligence and unseamanlike conduct. (The Clement, 2 Curtis C. C. 367.)

Tenth Point.—The appellee respectfully prays this Court to affirm the decree rendered in the Court below.

James C. Carter

~~TOWNSEND SCUDDER,~~

Counsel for Appellee.